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1 **UNITED STATES DISTRICT COURT**
2 **WESTERN DISTRICT OF NEW YORK**

3 **UNITED STATES OF AMERICA,**

4 Plaintiff,

5 v.

6 **JOSEPH BONGIOVANNI,**

7 Defendant.

Case No. 1:19-cr-227
(LJV)

March 28, 2024

8 **TRANSCRIPT OF JURY TRIAL**
9 **BEFORE THE HONORABLE LAWRENCE J. VILARDO**
10 **UNITED STATES DISTRICT JUDGE**

11 **APPEARANCES:**

TRINI E. ROSS, UNITED STATES ATTORNEY

BY: JOSEPH M. TRIPI, ESQ.

NICHOLAS T. COOPER, ESQ.

CASEY L. CHALBECK, ESQ.

Assistant United States Attorneys

Federal Centre

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And

UNITED STATES DEPARTMENT OF JUSTICE

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For the Plaintiff

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And

LAW OFFICES OF PARKER ROY MacKAY

BY: PARKER ROY MacKAY, ESQ.

3110 Delaware Avenue

Kenmore, New York 14217

For the Defendant

24 **PRESENT:**

BRIAN A. BURNS, FBI Special Agent

MARILYN K. HALLIDAY, HSI Special Agent

KAREN A. CHAMPOUX, USA Paralegal

LAW CLERK: REBECCA FABIAN IZZO, ESQ.

COURT DEPUTY CLERK: COLLEEN M. DEMMA

COURT REPORTER: ANN MEISSNER SAWYER, FCRR, RPR, CRR
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* * * * *

(Proceedings commenced at 9:36 a.m.)

(Jury not present.)

THE CLERK: All rise. United States District Court
for the Western District of New York is now in session, the
Honorable Lawrence J. Vilaro presiding.

THE COURT: Please be seated.

THE CLERK: 19-cr-227, United States of America
versus Joseph Bongiovanni.

Assistant United States Attorneys Joseph Tripi,
Nicholas Cooper, Casey Chalbeck, and DOJ Trial Attorney Jordan
Dickson, and paralegal Karen Champoux ON an behalf of the
government. Also present is HSI Special Agent Marilyn
Halliday and FBI Special Agent Brian Burns.

Attorneys Parker MacKay and Robert Singer appearing
with defendant. Defendant is present.

This is the date set for the continuation of a jury

09:36AM 1 trial.

09:36AM 2 **THE COURT:** Okay. Good morning, everybody.

09:36AM 3 **ALL PARTIES:** Good morning, Judge.

09:36AM 4 **THE COURT:** So a couple things I'd like to do before
09:36AM 5 we begin with today's testimony. We received a note, first of
09:37AM 6 all, that juror number 2 knows someone named Mike Macaluso,
09:37AM 7 friend of a friend, does not think it's the same person.
09:37AM 8 Anything we need to do about that?

09:37AM 9 **MR. MacKAY:** Judge, I don't think so if he's not
09:37AM 10 indicating he knows who he is.

09:37AM 11 **THE COURT:** Yeah. And he didn't testify. It was a
09:37AM 12 stipulation, so --

09:37AM 13 **MR. COOPER:** And I think by expressing that they
09:37AM 14 don't think it's the same person, it infers that there's not
09:37AM 15 going to be any bias or partiality, so I have nothing, Judge.

09:37AM 16 **THE COURT:** Yeah, I mean, we can bring the juror in
09:37AM 17 if the defense thinks that there's reason to do that.

09:37AM 18 Mr. Singer, any thought about that? In an abundance of
09:37AM 19 caution, do you want to?

09:37AM 20 **MR. SINGER:** I think, I mean, we made it clear that
09:37AM 21 the person works at -- I guess if you want to bring him in and
09:37AM 22 ask him do you have a negative opinion, you know, I -- I guess
09:37AM 23 that would be the only question.

09:37AM 24 **THE COURT:** Yeah, look it, I don't think it's
09:38AM 25 necessary, but look, I'm a belt-and-suspenders guy, so let's

09:38AM 1 bring juror number 2 in.

09:38AM 2 **MR. COOPER:** He says boots-and-suspenders all the
09:38AM 3 time, and we give him a hard time about it. I'm just making
09:38AM 4 fun of him.

09:38AM 5 **MR. TRIPI:** I say boots.

09:38AM 6 **THE COURT:** Why would you think boots and suspenders?

09:38AM 7 **MR. COOPER:** It makes no sense.

09:38AM 8 **THE COURT:** Yeah.

09:38AM 9 **MR. TRIPI:** I don't know where I heard it from, but I
09:38AM 10 clearly heard wrong the first time in my brain.

09:38AM 11 **THE COURT:** Saint Joe's. Saint Joe's.

09:38AM 12 (Juror 2 entered courtroom at 9:38 a.m.)

09:38AM 13 **THE COURT:** Good morning. So we have Juror Number 2
09:38AM 14 here. You know a Mike Macaluso you who don't think is the
09:38AM 15 same person?

09:38AM 16 **JUROR 2:** I do, Your Honor.

09:38AM 17 **THE COURT:** Anything about that at all that makes you
09:38AM 18 feel as though you couldn't be fair here?

09:38AM 19 **JUROR 2:** No, sir.

09:38AM 20 **THE COURT:** If it turns out to be the same person, do
09:38AM 21 you have a positive or a negative opinion of that person that
09:38AM 22 would make you feel as though couldn't judge the stipulation
09:39AM 23 fairly?

09:39AM 24 **JUROR 2:** No, Your Honor.

09:39AM 25 **THE COURT:** Anything anybody wants to ask?

09:39AM 1 **MR. MacKAY:** No, Your Honor.

09:39AM 2 **MR. COOPER:** Thank you, no.

09:39AM 3 **THE COURT:** Thank you, appreciate it.

09:39AM 4 (Juror 2 exited the courtroom at 9:39 a.m.)

09:39AM 5 **THE COURT:** Okay. Now second, I understand that
09:39AM 6 Mr. Bongiovanni has decided not to testify, and I just want to
09:39AM 7 address that with him.

09:39AM 8 **MR. SINGER:** Yes, Your Honor.

09:39AM 9 **THE COURT:** You've had a -- and I know you know this,
09:39AM 10 but I just feel an obligation to do.

09:39AM 11 You can sit.

09:39AM 12 I just feel an obligation to go over this with you.

09:39AM 13 You've talked with your lawyers about your right to
09:39AM 14 testify, Mr. Bongiovanni?

09:39AM 15 **THE DEFENDANT:** Yes, Your Honor.

09:39AM 16 **THE COURT:** And you understand that you have that
09:39AM 17 right to testify?

09:39AM 18 **THE DEFENDANT:** I do.

09:39AM 19 **THE COURT:** Do you understand that if you don't
09:39AM 20 testify, that can't be used against you. But we don't know
09:39AM 21 what the jurors are going to be thinking, right? So you have
09:39AM 22 to make that decision in conjunction with your lawyers whether
09:39AM 23 or not it's in your best interest to testify or not to
09:39AM 24 testify; do you understand that?

09:39AM 25 **THE DEFENDANT:** I do.

09:39AM 1 **THE COURT:** Okay. And you've had a conversation with
09:39AM 2 your lawyers?

09:39AM 3 **THE DEFENDANT:** I have.

09:39AM 4 **THE COURT:** You're satisfied with their
09:40AM 5 representation of you?

09:40AM 6 **THE DEFENDANT:** Supremely.

09:40AM 7 **THE COURT:** And you and they have made that decision
09:40AM 8 jointly?

09:40AM 9 **THE DEFENDANT:** We have.

09:40AM 10 **THE COURT:** And it's your personal decision not to
09:40AM 11 testify; is that correct?

09:40AM 12 **THE DEFENDANT:** That's correct.

09:40AM 13 **THE COURT:** Okay. Does the government think there's
09:40AM 14 anything more that I need do in that regard?

09:40AM 15 **MR. COOPER:** No, thank you, Judge.

09:40AM 16 **THE COURT:** Okay. Great. That's all I have. Is
09:40AM 17 there anything that either side wants to do before we resume?

09:40AM 18 **MR. DICKSON:** No, Your Honor.

09:40AM 19 **MR. SINGER:** Ms. Champoux is downloading some
09:40AM 20 exhibits, and my computer is currently 53 percent through an
09:40AM 21 update. So if we can just hold fast for a couple of moments
09:40AM 22 while this happens, Judge.

09:40AM 23 I'm up to 80 percent now. Sorry.

09:40AM 24 **THE COURT:** That's fine. I hate -- I hate computers.
09:40AM 25 I hate computers.

09:40AM 1 **MS. CHAMPOUX:** I'm good, so whenever you're ready.

09:40AM 2 **THE COURT:** You let me know, Mr. Singer, when your
09:41AM 3 little bar is all the way full.

09:41AM 4 **MR. SINGER:** We're still working.

09:41AM 5 **THE COURT:** Off the record.

09:41AM 6 (Off the record at 9:41 a.m.)

09:41AM 7 (Back on the record at 9:43 a.m.)

09:43AM 8 (Jury not present.)

09:43AM 9 **MR. SINGER:** I'm good, Judge, thank you.

09:43AM 10 **THE COURT:** And, Ms. Champoux, you said you're ready?

09:43AM 11 **MS. CHAMPOUX:** Yes.

09:43AM 12 **THE COURT:** Okay. Let's bring them in, please, Pat.

09:44AM 13 (Jury seated at 9:44 a.m.)

09:44AM 14 **THE COURT:** Good morning, everyone.

09:44AM 15 **ALL JURORS:** Good morning.

09:44AM 16 **THE COURT:** The record will reflect that all our
09:44AM 17 jurors are present. We've fixed the little computer issues we
09:44AM 18 had, and we're ready to go.

09:45AM 19 So, Mr. Singer, you may call your next witness.

09:45AM 20 **MR. SINGER:** Yes, Your Honor. The defense calls Tom
09:45AM 21 Devereaux.

09:45AM 22
09:45AM 23 **T H O M A S D E V E R E A U X**, having been duly called and
09:46AM 24 sworn, testified as follows:

09:46AM 25 **MR. SINGER:** May I proceed, Your Honor?

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THE COURT: You may.

MR. SINGER: Thank you.

DIRECT EXAMINATION BY MR. SINGER:

Q. Good morning, Mr. Devereaux.

A. Good morning.

Q. Where did you grow up, sir?

A. In Barker, New York. In Niagara County.

Q. And where do you live now?

A. I live in Lockport, New York.

Q. Where did you go to school?

A. Niagara Community College and Niagara University.

Q. And when you went to Niagara University, did you graduate with a particular degree?

A. I did. Business degree with an emphasis in accounting.

Q. What year did you graduate, sir?

A. 1999.

Q. Do you do any other type of further education?

A. No.

Q. How about do you hold any type of professional licenses or certifications?

A. I'm a certified public accountant in the State of New York, and a certified fraud examiner.

Q. So let's start with certified public accountant, it's a CPA?

09:47AM 1 A. CPA.

09:47AM 2 Q. So what is a CPA?

09:47AM 3 A. You -- we practice accounting. We provide audit
09:47AM 4 services, tax services, consulting services, to various
09:47AM 5 businesses and individuals. We're licensed in the State of
09:47AM 6 New York, which means we have to, you know, meet certain
09:47AM 7 education requirements every year. There's a test that we
09:47AM 8 have to pass to become certified.

09:47AM 9 Q. What type of documents and records do you review as a
09:47AM 10 CPA?

09:47AM 11 A. Any kind of -- all different kinds of financial records.
09:47AM 12 Financial statements of corporations, bank statements, credit
09:47AM 13 card statements, all -- yeah.

09:47AM 14 Q. How long have you been a CPA for, sir?

09:47AM 15 A. 20 years.

09:47AM 16 Q. And as far as the licensure requirements or
09:47AM 17 certifications, are there yearly trainings that you have to
09:48AM 18 attend or go through to maintain your certification?

09:48AM 19 A. Correct. 40 hours of continuing professional education
09:48AM 20 per year.

09:48AM 21 Q. You also mentioned that you're a certified fraud
09:48AM 22 examiner; is that right?

09:48AM 23 A. Yes.

09:48AM 24 Q. That's known as a CFE?

09:48AM 25 A. That's a CFE.

09:48AM 1 Q. So what is a CFE?

09:48AM 2 A. A certified fraud examiner, you know, specialize in, you
09:48AM 3 know, fraud and forensic examinations. You get that
09:48AM 4 certification, there's certain experience requirements that
09:48AM 5 have to be met. You know, as a CPA, those were already met,
09:48AM 6 so there is a test that you need to pass in order to get your
09:48AM 7 CFE certification.

09:48AM 8 Q. And similar to being a CPA, do you have to go through
09:48AM 9 certain training requirements year by year to maintain the
09:48AM 10 certification?

09:48AM 11 A. Correct. 20 hours of continuing education for that, ten
09:49AM 12 of -- ten of those hours have to be specific to fraud, and
09:49AM 13 two have to be specific to ethics each year.

09:49AM 14 Q. How about the documents and records that you review, are
09:49AM 15 they the same as you would as a --

09:49AM 16 A. In many --

09:49AM 17 Q. -- CPA that --

09:49AM 18 A. -- instances.

09:49AM 19 Q. -- you would review as a CFE?

09:49AM 20 A. Correct. In many instances, that's true.

09:49AM 21 Q. So just so you know, Ann is taking a typed record of our
09:49AM 22 words back and forth, so if we talk over each other, it
09:49AM 23 doesn't --

09:49AM 24 A. Sorry.

09:49AM 25 Q. -- make her job any easier, so, just --

09:49AM

1 A. Sorry.

09:49AM

2 Q. -- wait for the end of my question. It's not a problem.

09:49AM

3 So how long have you been a CFE, sir?

09:49AM

4 A. 14 years.

09:49AM

5 Q. And do you belong to any type of professional

09:49AM

6 organizations?

09:49AM

7 A. I do. The American Institute of Certified Public

09:49AM

8 Accountants, that's the AICPA. And New York State Certified

09:50AM

9 Public Accountants.

09:50AM

10 Q. What is the American Institute of CPAs? What type of

09:50AM

11 organization is that?

09:50AM

12 A. It's an organization of CPAs across the country. You

09:50AM

13 know, specific to a lot of what I do. They regulate the

09:50AM

14 rules that we have to follow for auditing procedures. You're

09:50AM

15 auditing companies.

09:50AM

16 Q. How does one become a member of the AICPA?

09:50AM

17 A. There's different levels of membership. It's, you know,

09:50AM

18 you're a CPA, once you are a CPA, to get that all you really

09:50AM

19 need to do is pay your annual dues.

09:50AM

20 Q. And what type of level of membership do you have in that

09:50AM

21 organization?

09:50AM

22 A. As a CPA member.

09:50AM

23 Q. How about the New York Society of CPAs, what's involved

09:50AM

24 in becoming a member of that organization?

09:50AM

25 A. It's similar to the AICPA, it's different -- with

09:51AM 1 New York CPAs specifically.

09:51AM 2 Q. And do membership in these organizations help you with
09:51AM 3 your yearly training requirements to maintain certifications?

09:51AM 4 A. Yeah, there's different classes we can use through them.
09:51AM 5 But there's also, you know, CPA require -- CPE requirements,
09:51AM 6 education requirements, that you have to meet to be able to
09:51AM 7 say in the AICPA.

09:51AM 8 Q. So I, as an attorney, I belong to the Bar Association of
09:51AM 9 the State of New York, and they are the ones who license me
09:51AM 10 to do my work. So is the CPA Association of New York State
09:51AM 11 somewhat similar?

09:51AM 12 A. Similar, yes.

09:51AM 13 Q. Okay. And then as far as being a CFE, do you belong to
09:51AM 14 any type of organizations that are specific to CFEs?

09:51AM 15 A. I do not. Just ACFE. It's American -- sorry --
09:51AM 16 Certified Fraud Examiners.

09:51AM 17 Q. Okay. So what's the American Association of Certified --

09:51AM 18 A. It's the Association of Certified Fraud Examiners, ACFE.

09:52AM 19 Q. Sorry to get that wrong. So what is the Association of
09:52AM 20 CFEs?

09:52AM 21 A. They're the ones who certified you as a CFE. Once again,
09:52AM 22 the education requirements that I talked about to maintain
09:52AM 23 your CFE certification are through the ACFE.

09:52AM 24 Q. Okay. What is it that do you for work now,
09:52AM 25 Mr. Devereaux?

09:52AM 1 A. I'm in the audit insurance practice. I'm a director at
09:52AM 2 Freed, Maxick CPAs.

09:52AM 3 Q. What is Freed, Maxick?

09:52AM 4 A. Certified public accountants.

09:52AM 5 Q. And what type of -- I'm sorry, how long have you worked
09:52AM 6 at Freed, Maxick for?

09:52AM 7 A. About nine and a half years.

09:52AM 8 Q. How long have you been a director at Freed, Maxick?

09:52AM 9 A. About three months.

09:52AM 10 Q. Prior to becoming a member at Freed, Maxick, did you work
09:52AM 11 at any other type of accounting firms?

09:52AM 12 A. I did. I worked at two other accounting firms. I worked
09:52AM 13 for five years at Tronconi Segarra & Associates.

09:53AM 14 Q. And after you left Tronconi Segarra & Associates, where
09:53AM 15 did you go from there?

09:53AM 16 A. That's where I went to, Freed, prior to Tronconi
09:53AM 17 Segarra & Associates, I was at Dopkins & Company.

09:53AM 18 Q. So what kind of financial investigations do you perform
09:53AM 19 in your current role at Freed, Maxick?

09:53AM 20 A. You know, our audits are certainly investigations of a
09:53AM 21 company's books and records. I've done several different
09:53AM 22 engagements that were, you know, specific to, like, contract
09:53AM 23 law, for instance -- or, I'm sorry, not contract law,
09:53AM 24 contract disputes. That's mainly the focus of where our
09:54AM 25 forensic is at this point.

09:54AM 1 Q. When you talk about forensics, what are you referring to
09:54AM 2 when you talk about that?

09:54AM 3 A. At certain times it's, you know, we're looking for
09:54AM 4 possibly, you know, missing income or missing assets. Other
09:54AM 5 times it's, you know, were the payments that were supposed to
09:54AM 6 be made to people that weren't made. Things of that nature.

09:54AM 7 Q. Prior to joining Freed, Maxick when you were working at
09:54AM 8 Tronconi Segarra & Associates, and Dopkins, were you engaged
09:54AM 9 in a similar type of work?

09:54AM 10 A. At Tronconi Segarra & Associates, I was. We did work in
09:54AM 11 the bankruptcy realm where we would -- did small audits where
09:54AM 12 the audits really were specifically looking at debtors and
09:54AM 13 whether or not they had reported any missing income or
09:54AM 14 missing assets on their bankruptcy forms.

09:55AM 15 There's also some projects, you know, similar to what
09:55AM 16 I've done at Freed, Maxick with contract disputes.

09:55AM 17 Q. When you're doing your type of work for corporations,
09:55AM 18 what is it that you're looking at to determine where
09:55AM 19 particular funds are?

09:55AM 20 A. It would depend on the project. You know, there's
09:55AM 21 another one that we're currently working on where it's just
09:55AM 22 specific to banking records, trying to track down where money
09:55AM 23 that shouldn't have left someone's account left, and where it
09:55AM 24 ended up.

09:55AM 25 There's other times where we're -- you know, we would

09:55AM 1 look at money that came into a company and determine, you
09:55AM 2 know, is that in line with contract and whatever contract,
09:55AM 3 you know, we have between two parties, you know, should --
09:56AM 4 were the proper payments made based on the funds that came in
09:56AM 5 to the parties.

09:56AM 6 Q. Okay. Besides corporations, have you looked into the
09:56AM 7 financial records of private individuals, people?

09:56AM 8 A. I have. The debtor audits that I referred to at Tronconi
09:56AM 9 Segarra & Associates were all individuals.

09:56AM 10 Q. Have you done anything involving Internal Revenue Service
09:56AM 11 inquiries?

09:56AM 12 A. I have not personally.

09:56AM 13 Q. And how about criminal investigations? Have you done any
09:56AM 14 work in criminal investigations when people are looking at
09:56AM 15 finances?

09:56AM 16 A. I did. When I was at Tronconi Segarra & Associates, it
09:56AM 17 started out as a contract dispute, and ended up turning over
09:56AM 18 to the authorities for criminal investigation, but at that
09:56AM 19 point we were no longer involved.

09:56AM 20 Q. How many of these financial audits or investigations do
09:57AM 21 you think you've conducted or participated in during your
09:57AM 22 time as a CPA and CFE for the last 20 years?

09:57AM 23 A. From the time going back to Tronconi Segarra &
09:57AM 24 Associates, over a hundred.

09:57AM 25 Q. And what type of approach do you undertake when you

09:57AM 1 conduct these investigations?

09:57AM 2 A. It's gonna be specific to the project. You know, you
09:57AM 3 need to look at what documents you have available to you,
09:57AM 4 what you're -- what is, you know, what's the dispute at hand,
09:57AM 5 or what's the question at hand. So we're gonna tailor our
09:57AM 6 procedures to those things.

09:57AM 7 Q. Do you use people to assist you when you conduct these
09:57AM 8 types of audits?

09:57AM 9 A. Yeah, we do. I have staff that work with us.

09:57AM 10 Q. And what kinds of software or tools do you use to
09:57AM 11 decipher or to look at the financial information that you're
09:57AM 12 trying to audit?

09:57AM 13 A. We're very heavy with Excel and some of its add-ons. We
09:58AM 14 built some add-ons internally. There's also a feature that
09:58AM 15 we have now, it's an Excel add-on, it's called Data Snipper,
09:58AM 16 so we can import pdf records such as bank statements and
09:58AM 17 cancelled checks, is what we really -- deposit slips, which
09:58AM 18 we used extensively in this matter.

09:58AM 19 And, you know, that helps us summarize data, and put it
09:58AM 20 into a format that's more useable.

09:58AM 21 Q. So I want to turn your attention to your involvement in
09:58AM 22 this case. So at some point in 2023, you were appointed by
09:58AM 23 the Court to assist Mr. Bongiovanni with his defense in this
09:58AM 24 case; is that correct?

09:58AM 25 A. Correct.

09:58AM 1 Q. And fair to say it's a paid assignment, correct?

09:58AM 2 A. Correct.

09:58AM 3 Q. You're not gonna do it for free, right?

09:58AM 4 A. Correct.

09:58AM 5 Q. So, what types of documents did you review to come to

09:58AM 6 some type of conclusions about the financials of Mr. and

09:58AM 7 Mrs. Bongiovanni in this case?

09:58AM 8 A. There was extensive documentation provided. We looked at

09:59AM 9 bank statements, we looked at deposit slips, cancelled

09:59AM 10 checks, we looked at credit card statements, retirement plan

09:59AM 11 statements, loan applications, tax returns.

09:59AM 12 Q. So, I want to break that down a little bit, because you

09:59AM 13 mentioned a bunch of documents.

09:59AM 14 So you mentioned tax records. Were these tax records for

09:59AM 15 both Joseph Bongiovanni and Lindsay Bongiovanni between --

09:59AM 16 A. Correct.

09:59AM 17 Q. -- 2012 and 2018?

09:59AM 18 A. Correct.

09:59AM 19 Q. You talked about wages, or salary, or income. Did you

09:59AM 20 look at things like W-2s for Lindsay and Joseph Bongiovanni

09:59AM 21 between that period?

09:59AM 22 A. Correct.

09:59AM 23 Q. You mentioned banking statements. So when we talk about

09:59AM 24 banking statements, let's start off with Joseph Bongiovanni

09:59AM 25 first.

09:59AM 1 What type of statements were you looking at as far as
09:59AM 2 accounts? Are we talking about savings, checking account,
09:59AM 3 money market?
09:59AM 4 A. Yeah, correct. Checking statements, savings statements.
10:00AM 5 There was a holiday account that he had at his credit union.
10:00AM 6 Q. How about Lindsay Bongiovanni, were you looking at
10:00AM 7 similar --
10:00AM 8 A. Yeah.
10:00AM 9 Q. -- things as far as banking?
10:00AM 10 A. Similar, yep.
10:00AM 11 Q. And with regard to credit cards, did you look at credit
10:00AM 12 card statements between 2012 and 2018 for both Lindsay and
10:00AM 13 Joseph Bongiovanni?
10:00AM 14 A. We did, yes.
10:00AM 15 Q. And you mentioned mortgages. So, I guess, as far as
10:00AM 16 loans, and leases, and mortgage documents that you looked at,
10:00AM 17 did you look at any type of mortgage documents or loan
10:00AM 18 documents for a property at 221 Lovering?
10:00AM 19 A. Yes, we did.
10:00AM 20 Q. How about for 85 Alder Place?
10:00AM 21 A. We did.
10:00AM 22 Q. Did you look at any type of lease or loan documents for
10:00AM 23 vehicles that were purchased or sold and leased by Joseph and
10:00AM 24 Lindsay during the 2012-2018 time period?
10:00AM 25 A. We did.

10:00AM 1 Q. Did you look at any type of refinancing or HELOC

10:00AM 2 documents during that time period?

10:00AM 3 A. Yes.

10:00AM 4 Q. And you mentioned retirement documents. Did you take a

10:00AM 5 look at any documents relating to Joseph Bongiovanni's Thrift

10:01AM 6 Savings Plan, or TSP?

10:01AM 7 A. Yes, we did.

10:01AM 8 Q. Did you look at any type of child support payments that

10:01AM 9 Lindsay Bongiovanni was receiving during that time period?

10:01AM 10 A. We did.

10:01AM 11 Q. How about, are you aware of whether the 221 Lovering

10:01AM 12 property was a rental property during that time period?

10:01AM 13 A. Yes, we did review records.

10:01AM 14 Q. What type of records did you review regarding the 221

10:01AM 15 Lovering property?

10:01AM 16 A. There were signed lease agreements with tenants. There

10:01AM 17 was Accurint report and National Grid reports.

10:01AM 18 Q. Wee had a number of pieces of evidence laid out during

10:01AM 19 the course of the testimony in this trial regarding tenants

10:01AM 20 at the property. Did you include information in your

10:01AM 21 analysis regarding testimony delivered by Maria Bongiovanni?

10:01AM 22 A. Yes.

10:01AM 23 Q. How about from any type of previous tenants, did you take

10:01AM 24 a look at either statements that were made by these tenants,

10:02AM 25 or testimony delivered about what they did and didn't do?

10:02AM

1 A. Yes.

10:02AM

2 Q. Were you made aware of any type of cash gifts that were

10:02AM

3 received by the Bongiovannis during this time period?

10:02AM

4 A. Yes.

10:02AM

5 Q. And you also were here for the testimony of Stephanie

10:02AM

6 Bifano, the government's FBI expert; is that right?

10:02AM

7 A. I was.

10:02AM

8 Q. Did you review her analysis into the documents in

10:02AM

9 evidence in this case?

10:02AM

10 A. I did.

10:02AM

11 Q. So how many documents do you think you reviewed as part

10:02AM

12 of your financial investigation or audit into the

10:02AM

13 Bongiovannis to prepare yourself today?

10:02AM

14 A. There were thousands of pages of documents.

10:02AM

15 Q. And did you use the computer software that you talked

10:02AM

16 about, or the team that you had at Freed, Maxick to help you

10:02AM

17 synthesize all this information?

10:02AM

18 A. I did, yes.

10:02AM

19 Q. How was it that you synthesized all this information?

10:03AM

20 A. Does that -- so the software, you know, will enable you

10:03AM

21 to link things into the spreadsheet so that you can use Excel

10:03AM

22 to, you know, sort data, analyze data, just makes it in a

10:03AM

23 more user friendly, readable format.

10:03AM

24 Q. So, I want to move on to a couple of, I guess, what you

10:03AM

25 saw inside these documents. But before we do that, you said

10:03AM 1 that you had an opportunity to listen to the testimony of
10:03AM 2 Ms. Bifano, correct?

10:03AM 3 A. Correct.

10:03AM 4 Q. And overall, generally speaking, how many of the numbers
10:03AM 5 that you came to in your audit matched the numbers that she
10:03AM 6 came to in hers?

10:03AM 7 A. Some of the numbers matched exactly. Some of the
10:03AM 8 numbers, I mean, if we were off, the differences were very
10:03AM 9 minor, you know, \$100 here or \$200 there. So, you know,
10:04AM 10 we -- we did not have any issue with the calculations that
10:04AM 11 she made.

10:04AM 12 Q. Okay. After reviewing all of these thousands of
10:04AM 13 documents and conducting an analysis, would you agree that
10:04AM 14 the Bongiovannis were using credit to maintain a certain
10:04AM 15 lifestyle?

10:04AM 16 A. Yes.

10:04AM 17 Q. How was it that you drew a conclusion like that?

10:04AM 18 A. We saw increasing balances in the credit card statements
10:04AM 19 from 2012 to 2018.

10:04AM 20 Q. In your review of these documents, did you notice that
10:04AM 21 the Bongiovannis, during the 2012 to 2018 time period, were
10:04AM 22 using loans to pay off other loans?

10:04AM 23 A. Yes.

10:04AM 24 Q. How many loans did you see during that time period that
10:04AM 25 were used for that purpose?

10:04AM 1 A. I honestly don't remember the number.

10:04AM 2 Q. I'm sorry, I didn't hear you.

10:04AM 3 A. I honestly don't remember the number of loans.

10:04AM 4 Q. Was it more than one?

10:04AM 5 A. It was more than one.

10:04AM 6 Q. Was it more than five?

10:05AM 7 A. It was probably close to 10 or 11.

10:05AM 8 Q. Okay. And how about you mentioned that you saw

10:05AM 9 accumulating debt on the Bongiovanni's credit cards; is that

10:05AM 10 right?

10:05AM 11 A. Correct.

10:05AM 12 Q. Did the Bongiovannis use mortgages to purchase properties

10:05AM 13 that they owned?

10:05AM 14 A. Yes.

10:05AM 15 Q. Which properties did they use mortgages?

10:05AM 16 A. Both properties, 221 Lovering and Alder.

10:05AM 17 Q. So you're talking about the Lovering and Alder addresses?

10:05AM 18 A. Yes.

10:05AM 19 Q. Did you see any type of loans or advances when you're

10:05AM 20 reviewing the documents that Joseph Bongiovanni used from his

10:05AM 21 TSP account to provide down payments on those mortgages?

10:05AM 22 A. Correct, he was taking loans from his Thrift Savings

10:05AM 23 Plan.

10:05AM 24 Q. Did you notice any type of purchases that were made from

10:05AM 25 Jared's jewelry store in your review of the documents?

10:05AM 1 A. We did not see the purchases, but we saw payments being
10:05AM 2 made to Jared.

10:05AM 3 Q. And how about any type of lease and loan documents
10:06AM 4 regarding vehicles? Did you observe those documents in your
10:06AM 5 review?

10:06AM 6 A. We did, yes.

10:06AM 7 Q. When you reviewed the credit card and the banking
10:06AM 8 statements for the documents you took a look at regarding the
10:06AM 9 Bongiovannis, did you see everyday transactions reflected on
10:06AM 10 those type of documents?

10:06AM 11 A. Yes. There would be, you know, grocery stores, gas --
10:06AM 12 gas charges, you know, home -- home good stores, clothing
10:06AM 13 stores.

10:06AM 14 Q. So just to review, so you saw groceries being paid for on
10:06AM 15 credit cards?

10:06AM 16 A. Yes.

10:06AM 17 Q. You saw gasoline being paid for on credit cards?

10:06AM 18 A. Yes.

10:06AM 19 Q. You saw things for home items being paid for on credit
10:06AM 20 cards?

10:06AM 21 A. Yeah.

10:06AM 22 Q. How about clothing, did you see clothing purchases
10:06AM 23 reflected on credit cards?

10:06AM 24 A. Yes.

10:06AM 25 Q. Sorry?

10:06AM

1 A. Yes.

10:06AM

2 Q. Did you see any type of purchases for airline tickets or
3 airfare?

10:06AM

10:07AM

4 A. Yes.

10:07AM

5 Q. How about for any type of hotels or restaurants, did you
6 see anything like that on credit cards?

10:07AM

10:07AM

7 A. We did, yes.

10:07AM

8 Q. When you were reviewing the debts that the Bongiovannis
9 accumulated over time, did you see any debts that were

10:07AM

10:07AM

10 suddenly paid off without any type of traceable funding
11 source?

10:07AM

10:07AM

12 A. No.

10:07AM

13 Q. When you were looking at payments that related to credit
14 cards, what did you see as far as checks being cut or
15 transfers being made to pay those type of bills?

10:07AM

10:07AM

16 A. Typically they were making, like, the minimum monthly
17 payments.

10:07AM

10:07AM

18 Q. And as far as the payments, how would they affect the
19 payments? Would that be something where they would use bill
20 pay, would they use a check, would they use some type of
21 transfer? What did you see?

10:07AM

10:07AM

22 A. Checks.

10:07AM

10:07AM

23 Q. How about for loans? So, let's first start off with
24 mortgage loans. What type of things did you see about how

10:08AM

10:08AM

25 those payments were made over the course of time?

10:08AM 1 A. They typically, excuse me, typically withdrawals from
10:08AM 2 their checking accounts.

10:08AM 3 Q. And how about for loans on vehicles or leases on
10:08AM 4 vehicles? How were those type of expenses paid for?

10:08AM 5 A. I don't remember specifically if it was through checks or
10:08AM 6 just transfers.

10:08AM 7 Q. But do you remember seeing some type of paper instrument
10:08AM 8 or something on a --

10:08AM 9 A. Yeah --

10:08AM 10 Q. -- on a certain --

10:08AM 11 A. -- we saw --

10:08AM 12 Q. -- statement --

10:08AM 13 A. -- withdrawals.

10:08AM 14 Q. -- statement that would reflect the way that it was paid?

10:08AM 15 A. Yes, we would see withdrawals in the checking account.

10:08AM 16 Q. Were you made aware of any type of suspicious activity
10:08AM 17 reports logged by banks or anything regarding currency
10:08AM 18 transaction reports filed by banks regarding the Bongiovannis
10:08AM 19 during the time period?

10:08AM 20 A. I'm not aware of any.

10:09AM 21 Q. We heard a lot of testimony in this case about a classic
10:09AM 22 car, a Buick, that Mr. Bongiovanni purchased back in 2012.
10:09AM 23 What type of documents did you see with regard to how that
10:09AM 24 car was obtained and paid for?

10:09AM 25 A. There was a loan taken out.

1 Q. Was there any type of cash that was used to pay for that
2 car?

3 A. There was a receipt that said he paid \$100 in cash.

4 Q. But, to the documents that you received, the remainder of
5 the car was paid through a loan?

6 A. Yes.

7 Q. How about for payment of that loan, we talked about how
8 loans would get paid down over time with a mortgage and with
9 car loans and other things like that. This particular loan
10 for the classic car, what did you see in the records
11 reflecting how things were paid for?

12 A. He was making monthly payments from his checking account.

13 Q. When the government executed a search warrant at the
14 Bongiovanni's home, did you receive any type of information
15 about high value items that were located inside the house?

16 A. I did not.

17 Q. So, for instance, were you made aware of any type of cash
18 that was found in a safe of a large quantity?

19 A. I'm not aware of any.

20 Q. Were you made aware of any type of gold bars or gold
21 coins that were found on the property during the search?

22 A. I'm not aware of any.

23 Q. How about expensive artwork or jewelry? Was there
24 anything along those lines that you were made aware of?

25 A. I'm not aware of.

1 Q. How about any type of expensive electronics or furniture
2 located in the house during the search?

3 A. I'm not aware of any.

4 Q. So you talked a little bit about your analysis and
5 Ms. Bifano's analysis, when it came down to the money in and
6 the money out and what was reflected on the statements, did
7 not differ in too many respects; is that a fair statement?

8 A. That's a fair statement.

9 Q. So, how is it that your analysis differs from hers?

10 A. Her analysis had cash receipts that were stated that -- I
11 don't remember the exact terminology, but they were unknown
12 source.

13 **MR. SINGER:** So, Ms. Champoux, would you mind
14 bringing up Government Exhibit 337-3, please?

15 **BY MR. SINGER:**

16 Q. So, Mr. Devereaux, you've had an opportunity to take a
17 look at this before you came into court today, right?

18 A. Yes, I have.

19 Q. And so as far as the cash deposits that you just
20 referenced inside of your testimony, is that what you're
21 talking about, sir?

22 A. This is what I'm talking about.

23 Q. And would that reflect -- that would be reflected in this
24 chart in those light green bars at the top?

25 A. Correct.

1 Q. So what was your understanding of why those were not
2 counted?

3 A. That they couldn't be traced to the Schedule E of the tax
4 return.

5 Q. But in your analysis, did you find cash payments or cash
6 deposits that were reflective of potentially a source of
7 income?

8 A. We did.

9 Q. So, how was it -- and I guess let's break that down.

10 How was it you came to a conclusion that some of the cash
11 deposits that are being made may be reflective of some source
12 of income?

13 A. We saw rental agreements between Mr. Bongiovanni and
14 tenants. They were during certain periods of time. There
15 were no checks received from those tenants that represented
16 rental income, but we did see cash deposits that were, you
17 know, within the first five business days of the month.

18 Q. So, beyond the documentary evidence that you took a look
19 at, you're aware of the witness testimony from several
20 tenants in this case; is that right?

21 A. Correct.

22 Q. And you're aware of evidence they provided that they were
23 making rental payments during that time?

24 A. Yes.

25 **MR. DICKSON:** Objection. Judge, can we approach on

1 this, please?

2 **THE COURT:** Sure.

3 (Sidebar discussion held on the record.)

4 **MR. DICKSON:** Judge, this is getting into, I think,
5 an improper expert opinion land here. I let it slide with the
6 debt piece because I think that was consistent with what
7 Ms. Bifano testified to. But if this person is relying on
8 statements by other people to form his analysis, that is
9 something an expert can do, but it's not something that a fact
10 witness can do.

11 And so, right now, we're getting into what other
12 people told him that led him to the conclusion that these
13 particular payments were or were not consistent with rent or
14 consistent with another source of income, I think is how
15 Mr. Singer reported it.

16 **THE COURT:** Well, the testimony he's given is similar
17 to the testimony that Ms. Bifano gave. I'm not sure it's fact
18 testimony or expert testimony, there's a gray area between the
19 two where they are saying there's no source, there's no -- no
20 traceable source of the income. He's suggesting that there
21 may be. And, so, I'm not sure what the problem is.

22 **MS. CHALBECK:** Judge, can I respond to just that for
23 a second, Judge, as to the nature of Ms. Bifano's testimony?

24 **THE COURT:** Sure.

25 **MS. CHALBECK:** Ms. Bifano made it very clear that the

1 source of the cash could be rental income, it could be from a
2 home equity line of credit, it could be from gifts, it could
3 be from any number of things. But the fundamental part of her
4 testimony is that you can't trace cash. And she wasn't going
5 to make any assumptions, because she was testifying as a fact
6 witness and not as an expert, as to what that source could be.

7 By contrast here, and I think this goes to
8 Mr. Dickson's point, we're getting into the territory that we
9 litigated yesterday where Mr. Devereaux is formulating an
10 assumption that these checks from the tenants were cashed by
11 the defendant, and that the defendant deposited the proceeds
12 into his account.

13 **THE COURT:** I'm not hearing --

14 **MR. DICKSON:** But -- I'm sorry, Judge.

15 The important thing here is that he has just
16 testified that part of his analysis relied on hearsay. It
17 relied on statements from the tenants. It relied on
18 statements from Maria Bongiovanni. It relied on --

19 **THE COURT:** Testimony. Testimony given in this
20 trial.

21 **MR. DICKSON:** That he was not here for. So the only
22 way that he can know about that testimony --

23 **THE COURT:** Is by reading the transcript.

24 **MR. DICKSON:** Which is hearsay. He's getting that
25 from somebody else.

1 And the problem is that experts are allowed to rely
2 on hearsay, this witness is not an expert. So if his analysis
3 is reliant on hearsay, that's where we're getting into
4 improper expert opinion testimony.

5 **THE COURT:** Talk to me.

6 **MR. SINGER:** The only thing that I'm recounting is
7 the evidence that's been produced in this trial, which I think
8 is uncontroverted. I mean, the government, not us, brought in
9 multiple tenants who testified about the way they paid for
10 things. They introduced checks and other devices that proved
11 that these people were renting there. Ms. Bifano testified
12 about how she looked at utility records, Accurant records, and
13 all those things pointed to the fact that someone else was
14 renting those things.

15 This is no different than Agent Burns getting on the
16 stand and recounting the testimony that was already in
17 evidence. You know? And we --

18 **MR. DICKSON:** It is different because Special Agent
19 Burns was in court and heard the evidence. And this witness
20 is not a summary witness for the defense, he's an accountant.
21 He's forming conclusions that he is basing on hearsay which,
22 if he were an expert, he could do no problem.

23 **THE COURT:** Tell me the problem with him giving
24 expert testimony.

25 **MR. DICKSON:** We litigated this yesterday, Judge.

1 The problem is that he didn't -- first of all, the defense
2 didn't give us notice. Right? And there are specific
3 requirements under Rule 16 for notice of expert testimony.
4 They need to tell us what his conclusions are in advance, they
5 need to tell us his methodology, they need to tell us the
6 facts and data that he relied on. We don't have any of that.

7 And particularly where there's a dispute about the
8 reliability of the methodology, I mean, I would have wanted to
9 do a Daubert hearing if this witness was going to testify to
10 expert opinions when his methodology, as we established and
11 talked about yesterday, is different.

12 **THE COURT:** All he's saying -- as I understand it, we
13 haven't heard what he's going to say, as I understand it all
14 he's going to say is that these deposits may be consistent
15 with his parents' cash rent payments and with rent payments
16 from tenants that we don't have the checks for.

17 **MR. DICKSON:** Which requires him to have heard
18 hearsay, out-of-court statements by witness.

19 **THE COURT:** Why?

20 **MR. DICKSON:** Because he can't --

21 **THE COURT:** He knows --

22 **MR. DICKSON:** I'm sorry.

23 **THE COURT:** -- he knows that there are -- he knows
24 that rent was supposed to be paid because he's got the leases.

25 He's got a lease with Mr. and Mrs. Bongiovanni, he's

1 got -- and he can't find any checks paying those rent
2 payments.

3 He sees deposits in the approximate amount of the
4 rent payments being made in the first five days of the month.

5 Why can't he -- I mean, I can conclude from that that
6 they may have been rent payments that were made in cash, maybe
7 they weren't, you can cross-examine on that. But why is that,
8 that just seems to me to be a basic simple conclusion that he
9 can reach as an accountant.

10 I don't see checks going into the account. I know
11 there was rent that was supposed to have been paid. I don't
12 see that rent.

13 So, and I -- but I do see the deposit of \$1,400
14 every -- on the third day of every month for six months in a
15 row.

16 **MR. DICKSON:** Sure. And yesterday, Judge, like we
17 argued that, and if that was what the testimony was cabined
18 to, fine. Let the Court decide.

19 **THE COURT:** But that's not what's happening?

20 **MR. DICKSON:** Because he's now testified, this
21 witness has testified that he reviewed statements by Maria
22 Bongiovanni, he reviewed statements I think about gifts or
23 something that Mr. Bongiovanni received, he reviewed
24 statements by the tenants. That's not just looking at bank
25 records and looking at leases. That's not just looking and

1 reviewing the documents.

2 **THE COURT:** Why -- why -- why can't he simply correct
3 that mistake by asking hypotheticals? Let me give you a
4 hypothetical, and have him base his testimony on that?

5 **MR. DICKSON:** Because he's not an expert, and he's
6 being asked a hypothetical. I mean, hypotheticals are sort of
7 heartland of expert testimony, right? They can do that.

8 **THE COURT:** But you can ask fact witnesses
9 hypotheticals as well.

10 **MR. DICKSON:** But not when those hypotheticals
11 require a set of assumptions that are reliant on testimony.

12 **THE COURT:** But this jury -- the hypotheticals would
13 rely on the testimony that the jury heard. I don't see a
14 problem with this.

15 So, look it. Let's -- the hearsay objection probably
16 is a good objection, so I'll sustain that objection.

17 Stay away from the hearsay. I think you can do what
18 you want to do without the hearsay. Okay?

19 **MR. DICKSON:** Thanks, Judge.

20 **MR. MacKAY:** Judge, I just wanted to flag a
21 logistical issue, because I'm watching Mr. Bongiovanni. He
22 gave me a note that he needs to use the bathroom.

23 **THE COURT:** Say it again?

24 **MR. MacKAY:** Mr. Bongiovanni gave me a note that he's
25 going to need to use the bathroom.

10:21AM 1 **THE COURT:** Do you want to break right now?

10:21AM 2 **MR. MacKAY:** I think we can go a little bit longer,
10:21AM 3 but I think the direct, you've probably got --

10:21AM 4 **MR. SINGER:** Yeah, I guess I've some time. Half an
10:21AM 5 hour?

10:21AM 6 **THE COURT:** You tell me when you want a break.

10:21AM 7 **MR. MacKAY:** I'll signal.

10:21AM 8 **THE COURT:** Signal Mr. Singer.

10:21AM 9 (End of sidebar discussion.)

10:21AM 10 **THE COURT:** Okay. So the objection to the hearsay is
10:21AM 11 sustained. Next question.

10:21AM 12 **BY MR. SINGER:**

10:21AM 13 Q. So, we talked a little bit about you're aware of lease
10:21AM 14 agreements that were signed during this period; is that
10:21AM 15 right?

10:21AM 16 A. Correct.

10:21AM 17 Q. And you heard Ms. Bifano talk about various utility
10:21AM 18 records that she had pulled; is that right?

10:21AM 19 A. Correct.

10:21AM 20 Q. She also pulled something called Accurant records; is
10:21AM 21 that right?

10:21AM 22 A. Correct.

10:21AM 23 Q. And that evidence suggested to you that were tenants
10:22AM 24 living at 221 Lovering for multiple periods of time; is that
10:22AM 25 right?

1 A. It did.

2 Q. You had a chance to take a look at cancelled checks from
3 tenants; is that right?

4 A. I did.

5 Q. And what did that show you, Mr. Devereaux?

6 A. There were certain tenants that -- his parents, for
7 example, there were no cancelled checks being deposited in
8 thinks account.

9 There was another tenant, Whalen, that we were only able
10 to identify one check. He was a tenant for about two years,
11 two-and-a-half years. And we only saw one rent check from
12 him in that time frame.

13 Q. Did you see checks and money orders deposited into
14 Mr. Bongiovanni's -- sorry, Bongiovanni's account during the
15 rental periods for other tenants?

16 A. We did.

17 Q. And, so, you're aware of the fact that Mr. and
18 Mrs. Bongiovanni, Mr. Bongiovanni's parents, Fred and Maria,
19 they didn't pay by check as you just testified, right?

20 A. Correct.

21 Q. And you're aware of the fact that they were paying \$750 a
22 month in rent?

23 A. Yes, they had a lease agreement for \$750 a month.

24 Q. So, how was it that you determined that \$750 a month in
25 rent was being paid by Fred and Maria Bongiovanni during that

1 2012 to 2018 time period?

2 A. We saw deposits in cash going into Mr. Bongiovanni's bank
3 account during that period.

4 Q. How about with Frederick and Maria Bongiovanni, did you
5 take a look at their bank accounts?

6 A. I did.

7 Q. Did you see corresponding withdrawals towards the first
8 part of the month to suggest that withdrawals were being made
9 for those cash payments?

10 A. Yes, typically he would withdraw cash right at the end of
11 the month.

12 **MR. SINGER:** So, Ms. Champoux, if you can bring down
13 Government Exhibit 337-3. And I'd ask you to bring up
14 Government Exhibit 335, please.

15 **THE COURT:** This is in evidence?

16 **MR. SINGER:** This is in evidence, yes, Judge.

17 If we can open up the Fred folder, please. And open
18 up the combined pdf please.

19 **BY MR. SINGER:**

20 Q. So, what I'd like to do is just go through -- I'll take
21 one year. So they started renting, from your understanding,
22 in December of 2013; is that right?

23 A. Correct.

24 Q. And they continuously rented throughout that entire time
25 period of, after, until 2018?

10:24AM 1 A. Correct.

10:24AM 2 Q. So let's take a middle year, 2016.

10:24AM 3 **MR. SINGER:** So, Ms. Champoux, if you can advance to
10:24AM 4 page 130 of this document, please. And if you can scroll
10:25AM 5 down -- sorry, if you can scroll down. Sorry, if you can go
10:25AM 6 up a little.

10:25AM 7 Is there a way to expand this to one page,
10:25AM 8 Ms. Champoux? Thank you. If we could go up one page, please?
10:25AM 9 Thank you.

10:25AM 10 **BY MR. SINGER:**

10:25AM 11 Q. So, with regard to your review, there are a couple of
10:25AM 12 different documents you took a look at. Did you look at
10:25AM 13 Frederick Bongiovanni's summary of accounts?

10:25AM 14 A. We did.

10:25AM 15 Q. And what was that to your understanding, sir?

10:25AM 16 A. Statements from his credit union account.

10:25AM 17 Q. And so on these statements, does it reflect withdrawal
10:25AM 18 and deposit information for Frederick Bongiovanni?

10:25AM 19 A. It does.

10:25AM 20 **MR. SINGER:** And so if we can advance forward,
10:25AM 21 Ms. Champoux, to the next page. Actually next down.

10:26AM 22 **BY MR. SINGER:**

10:26AM 23 Q. So as far as the different accounts that you're looking
10:26AM 24 at, which ones were you looking at?

10:26AM 25 A. Oh, all of these accounts.

1 Q. And for four of these accounts, would you go and be able
2 to look at them month by month?

3 A. Yes.

4 **MR. SINGER:** And if we can advance to page 167,
5 Ms. Champoux. And scroll down a little bit. And stop there.

6 **BY MR. SINGER:**

7 Q. So, I'm going to direct your attention, sir, down to the
8 bottom of the page. Do you see a cash withdrawal reflected
9 for \$1,000 on 1/29/2016?

10 A. Yes.

11 Q. And, so, when you saw a cash withdrawal for this amount
12 on that, what did you interpret? What -- how did that enter
13 your analysis of whether or not rent was being paid?

14 A. Well, I -- Mr. Bongiovanni withdrew cash from his account
15 at the end of the month. We would look to see, you know,
16 if -- there were no checks written for rent at that time that
17 we saw clear, Mr. Bongiovanni's account -- I'm sorry, Joe
18 Bongiovanni's account, when we saw the cash coming out of
19 Fred Bongiovanni's account, we -- we would see a deposit.
20 They weren't typically, you know, exact. Like, if Fred
21 withdrew \$1,000, Joe, you know, deposited \$1,000. But we did
22 see corresponding deposits.

23 **MR. SINGER:** So, Ms. Champoux, if we could advance to
24 page 170 of the exhibit, please. And we can scroll down just
25 a little bit. And stop there.

10:27AM

1

BY MR. SINGER:

10:27AM

2

Q. So, I'm going to direct your attention again down to the

10:27AM

3

bottom of the page, the 2/29/2016 cash withdrawal for \$750.

10:27AM

4

Was it your understanding that \$750 was the rent that

10:28AM

5

Frederick and Maria were paying?

10:28AM

6

A. Yes.

10:28AM

7

Q. And when you saw a withdrawal like that on the last day

10:28AM

8

of the month in February, how did that aid your analysis

10:28AM

9

about whether rent was being paid?

10:28AM

10

A. We made a determination that that was probably to cover

10:28AM

11

the rent.

10:28AM

12

MR. SINGER: If we can advance to page 174,

10:28AM

13

Ms. Champoux. Actually go up one page. Thank you.

10:28AM

14

And if we can go down one page? I'm sorry. Thank

10:28AM

15

you.

10:28AM

16

BY MR. SINGER:

10:28AM

17

Q. So, I'm going to direct your attention to the top of the

10:28AM

18

page, sir. Do you see a second transaction marked cash

10:28AM

19

withdrawal on 3/13 of 2016, at the top of the page?

10:29AM

20

A. Yes.

10:29AM

21

Q. Was that something that was consistent with some of the

10:29AM

22

rent withdrawals that you believed occurred here?

10:29AM

23

A. Yes.

10:29AM

24

MR. SINGER: If we could advance to page 176,

10:29AM

25

Ms. Champoux.

10:29AM

1

BY MR. SINGER:

10:29AM

2

Q. And I'll direct your attention down to the bottom of the

10:29AM

3

page, the 4/29/2016 transaction and withdrawal of cash for

10:29AM

4

\$750. Was that another example of something that you saw in

10:29AM

5

the records?

10:29AM

6

A. Yes.

10:29AM

7

MR. SINGER: If we could advance to page -- sorry, if

10:29AM

8

we can go back to page 146, Ms. Champoux. My apologies. The

10:29AM

9

records are a little bit out of order.

10:29AM

10

BY MR. SINGER:

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11

Q. I'm directing your attention to page 146 for a withdrawal

10:29AM

12

on 6/1/2016. Do you see that's the second transaction

10:29AM

13

reflected on the page, sir?

10:29AM

14

A. Yes.

10:29AM

15

Q. That's for \$750?

10:29AM

16

A. It is.

10:29AM

17

MR. SINGER: How about if we can advance to page 150,

10:29AM

18

Ms. Champoux.

10:30AM

19

BY MR. SINGER:

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20

Q. And I'll direct your attention to the second transaction

10:30AM

21

on the top of that page, Mr. Devereaux, the cash withdrawal

10:30AM

22

for \$750 on the 1st of July. Was that another thing that

10:30AM

23

aided your analysis?

10:30AM

24

A. Yes.

10:30AM

25

MR. SINGER: If we could go back to page 149,

1 Ms. Champoux.

2 **BY MR. SINGER:**

3 Q. And I'll direct your attention down to the bottom of that
4 page, sir. Do you see a cash withdrawal for \$750 on
5 7/29/2016?

6 A. Yes.

7 Q. That was for \$750 consistent with the rent payments you
8 understood were being made?

9 A. Correct.

10 **MR. SINGER:** If we could advance to page 152,
11 Ms. Champoux. And scroll down a little. And right there.

12 **BY MR. SINGER:**

13 Q. The one transaction, cash withdrawal on 8/31/2016, do you
14 see that for \$900, sir?

15 A. I do.

16 Q. I know that's not \$750, but was that something that
17 helped aid in the analysis about whether cash was withdrew
18 for a particular purpose?

19 A. Yes.

20 **MR. SINGER:** If we could advance to page 155,
21 Ms. Champoux. And stop there.

22 **BY MR. SINGER:**

23 Q. And so I'll direct your attention down to the bottom of
24 the page, Mr. Devereaux. The cash withdrawal for a little
25 more than \$1,000 on 9/30/2016. Was that something that

10:31AM 1 helped inform your analysis?

10:31AM 2 A. Yes.

10:31AM 3 **MR. SINGER:** If we can advance to page 158,

10:31AM 4 Ms. Champoux.

10:31AM 5 **BY MR. SINGER:**

10:31AM 6 Q. And I'll direct your attention, again, down to the bottom

10:31AM 7 of the page, Mr. Devereaux, the cash withdrawal on 10/31/2016

10:31AM 8 for \$900. Was that something that you factored into your

10:31AM 9 analysis?

10:31AM 10 A. Yes.

10:31AM 11 **MR. SINGER:** If we could advance to page 161,

10:31AM 12 Ms. Champoux. And stop there.

10:31AM 13 **BY MR. SINGER:**

10:31AM 14 Q. I'll direct, again, your attention down to the bottom of

10:31AM 15 the page, Mr. Devereaux. The cash withdrawal for \$911 made

10:31AM 16 on November 30th, 2016. Was this something you factored into

10:32AM 17 your analysis?

10:32AM 18 A. Yes.

10:32AM 19 **MR. SINGER:** And, Ms. Champoux, if you can advance to

10:32AM 20 page 164, please. And scroll down a little bit. Stop there.

10:32AM 21 **BY MR. SINGER:**

10:32AM 22 Q. That cash withdrawal in the bottom of the page for \$810

10:32AM 23 on December 30th, 2016, this was something you factored into

10:32AM 24 your analysis?

10:32AM 25 A. Yes.

1 Q. Okay. So I'm not going to go through every single year
2 because we'll be here for a long time, and I think a lot
3 more, but when you reviewed the records, did you see these
4 type of consistent transactions occur right around the end of
5 the month or the beginning of the month as far as cash
6 withdrawals?

7 A. Yes, we did.

8 Q. And that was consistent throughout that time period the
9 Bongiovannis --

10 A. Yes.

11 Q. -- lived in --

12 A. Yes.

13 Q. -- the residence?

14 A. Sorry, yes, it was.

15 **MR. SINGER:** If we can take down that exhibit,
16 Ms. Champoux. Thank you.

17 **BY MR. SINGER:**

18 Q. So is it your understanding that these withdrawals
19 generally corroborate the fact that some type of rent was
20 being paid by the Bongiovannis?

21 **MR. DICKSON:** Objection, improper opinion.

22 **THE COURT:** Yeah, sustained.

23 **BY MR. SINGER:**

24 Q. So, if Mr. Bongiovanni's parents, Fred and Maria, were
25 paying 750 a month during the time period they lived at 221

10:33AM 1 Lovering between 2012 and 2013, is it your understanding that
10:33AM 2 would constitute 61 payments of rent?
10:33AM 3 A. Yes.
10:33AM 4 Q. And if 61 payments of rent were made at \$750 each, we're
10:33AM 5 talking about \$45,750 of rent?
10:33AM 6 A. I'm going to trust your math on that, yes.
10:33AM 7 Q. I know we've had some issues with lawyer math sometimes,
10:33AM 8 I got my calculator out on that one.
10:33AM 9 So we talked a little bit earlier about how you saw other
10:33AM 10 tenants occupying the upper apartment at 221 Lovering; is
10:33AM 11 that right?
10:33AM 12 A. Yes.
10:33AM 13 Q. And most of the time, what you saw inside the records
10:33AM 14 that you reviewed was that a lot of them were paying rent by
10:34AM 15 check or money orders?
10:34AM 16 A. That's correct.
10:34AM 17 Q. But you mentioned the Whalens, you saw some exceptions to
10:34AM 18 that; is that right?
10:34AM 19 A. That's right.
10:34AM 20 Q. What did you notice about the Whalens' rent check
10:34AM 21 deposits?
10:34AM 22 A. We were only able to identify one rent deposit, one check
10:34AM 23 that was deposited that said rent from the Whalens. And it
10:34AM 24 was for \$700.
10:34AM 25 Q. But you were here for Ms. Bifano's testimony, right?

10:34AM

1 A. Yes.

10:34AM

2 Q. And you heard her talk about how there was evidence based

10:34AM

3 on utility records and Accurant searches about the Whalens

10:34AM

4 living in that property from the summer of 2012 to summer of

10:34AM

5 2015?

10:34AM

6 A. Yes.

10:34AM

7 Q. And you also observed lease documents entered into

10:34AM

8 evidence in this case, correct?

10:34AM

9 A. Yes.

10:34AM

10 Q. And they reflected the same thing?

10:34AM

11 A. Yes.

10:34AM

12 Q. Was there any evidence that the Whalens were living there

10:34AM

13 for free?

10:34AM

14 A. Not that I'm aware of.

10:34AM

15 Q. So, if the Whalens were paying \$700 a month for the first

10:35AM

16 two years of the lease, and 750 for the last year they were

10:35AM

17 there, between 2012 and 2014, if they were paying \$700 a

10:35AM

18 month, that's 24 months, would you agree with me on that?

10:35AM

19 A. Yes.

10:35AM

20 Q. The math on that would be \$16,800 in rent payments?

10:35AM

21 A. Yes.

10:35AM

22 Q. And if it was 750 a month for that last year, at 12

10:35AM

23 months, that would be \$9,000?

10:35AM

24 A. Yes.

10:35AM

25 Q. So, we're talking about \$25,800 worth of rent?

10:35AM

1 A. Yes.

10:35AM

2 Q. But you only found one payment for \$700?

10:35AM

3 A. Correct.

10:35AM

4 Q. So, when you were looking at Mr. Bongiovanni, not Fred

10:35AM

5 and Maria, but Joseph Bongiovanni's bank records, and trying

10:35AM

6 to determine what cash deposits were being made during that

10:35AM

7 time period, what did you see?

10:36AM

8 A. We saw that there were deposits being made within the

10:36AM

9 first five business days of the month on either side. Either

10:36AM

10 the end of the previous month, or the beginning of that

10:36AM

11 month. That were, you know, typically round dollar amounts

10:36AM

12 of, you know, 6- or \$700.

10:36AM

13 Q. So I want to talk to you a little bit about your analysis

10:36AM

14 of the criteria that you used. So you mentioned five

10:36AM

15 business days. What was the importance of attaching that to

10:36AM

16 part of your analysis of determining or taking a look at cash

10:36AM

17 deposits being made during that period?

10:36AM

18 A. The lease agreements of both the Whalens and Fred

10:36AM

19 Bongiovanni had a clause in there that there was a late fee

10:36AM

20 due at five days.

10:36AM

21 Q. And as far as business days are concerned, why was it --

10:37AM

22 why was it limited by five business days?

10:37AM

23 A. I mean, typically, people would pay the rent, you know,

10:37AM

24 to try and not have to pay an extra -- extra late fee, that's

10:37AM

25 what our expectation would be.

1 Q. Was there a reason why you chose business days over
2 calendar days?

3 A. If a payment was made on a Saturday, it was likely that
4 Mr. Bongiovanni would not be able to deposit those funds.

5 Q. Is that something that's kind of standard in the
6 accounting field of your attaching business days as opposed
7 to calendar days for -- for looking for payments like that?

8 A. Yes, we do it for a lot of things.

9 Q. And as far as, I guess, the cash deposits during that
10 period of time, was there a certain criteria used to exclude
11 payments that, in your professional judgment, didn't take a
12 look at, didn't look like rent payments?

13 A. Yeah. If there were payments that were, you know, say,
14 \$100 that fell, you know, in a -- in a time period where we
15 have a -- a rent deposit that we thought was -- or, we had a
16 deposit that we thought was probably for rent, we would
17 exclude that.

18 There were other -- some other small, you know, like a \$5
19 charge -- \$5 deposit that we excluded.

20 **MR. SINGER:** So, Ms. Champoux, if you can bring up
21 Government Exhibit 330A which is in evidence.

22 **BY MR. SINGER:**

23 Q. So, these are various money orders that were deposited by
24 the Ms. Papierski and Mr. Heinz when they were renting the
25 unit; do you understand that, Mr. Devereaux?

10:38AM 1 A. Yes.

10:38AM 2 Q. And do you recognize them?

10:38AM 3 A. I do.

10:38AM 4 Q. So, I just want to direct your attention to page 1. So

10:38AM 5 is this a payment that was made for rent by Ms. Papierski?

10:39AM 6 A. Yes.

10:39AM 7 Q. And it looks like it's a payment that was made on

10:39AM 8 3/1/2017 for rent?

10:39AM 9 A. Correct.

10:39AM 10 Q. Do you see up at the top left corner about information

10:39AM 11 about when it was deposited into the account?

10:39AM 12 A. Yes.

10:39AM 13 Q. And is it reflective of -- looks like the same day?

10:39AM 14 A. It does.

10:39AM 15 **MR. SINGER:** And advance to the next page,

10:39AM 16 Ms. Champoux, to page 2.

10:39AM 17 **BY MR. SINGER:**

10:39AM 18 Q. So the Papierskis were paying a little bit more than the

10:39AM 19 750, to your understanding, based on the review of the

10:39AM 20 documents; is that right, sir?

10:39AM 21 A. Yes.

10:39AM 22 Q. So this was another money order made on that same

10:39AM 23 deposit?

10:39AM 24 A. It was.

10:39AM 25 Q. And so is this an example of something being deposited

1 within that five business day period?

2 A. Yes.

3 **MR. SINGER:** Ms. Champoux if we could advance to the
4 next page, page 3.

5 **BY MR. SINGER:**

6 Q. So does this appear to be another money order that was
7 made for rent by Ms. Papierski?

8 A. Yes.

9 Q. And the deposit date up in the top left corner, do you
10 see that there, Mr. Devereaux?

11 A. Yes.

12 Q. So this was 6/6 of 2016?

13 A. Correct.

14 Q. So, I looked at a calendar, I know you don't have one in
15 front of you, but 6/1/2016 fell on a Wednesday, which meant
16 that 6/3 was a Friday, and 6/6 was the following Monday after
17 the weekend.

18 So, as far as the business day example that you talked
19 about in your criteria when you're reviewing these documents,
20 is this an example of something that was not deposited right
21 away, but was deposited within that five business day period?

22 A. Yes.

23 Q. Because I guess if you were counting business days, how
24 would you count out the business days on this particular
25 deposit?

1 A. The 1st was a Wednesday?

2 Q. The 1st was a Wednesday, yes, sir.

3 A. This would be the fourth business day.

4 Q. Okay. And so if this was a cash deposit that you saw,
5 this would be an example of something you would include?

6 A. Yes.

7 **MR. SINGER:** Okay. Ms. Champoux, if you could
8 advance to page 21 of the exhibit, please.

9 **BY MR. SINGER:**

10 Q. So, this looks like a money order that was deposited on
11 8/19/2016; is that right?

12 A. Correct.

13 Q. And I note in the -- down in the memo section, it's
14 noting how it's September rent; is that right?

15 A. Yes.

16 Q. So, I guess based on the document, does it appear like
17 Ms. Papierski paid her September month -- rent early that
18 month?

19 **MR. DICKSON:** Objection. Improper opinion, whether
20 she paid her rent early.

21 **THE COURT:** Overruled. Overruled.

22 **THE WITNESS:** Yes.

23 **BY MR. SINGER:**

24 Q. So, let's take the example of the five business day rule.
25 If you saw a cash deposit occurring in the middle of the

1 month for something that appeared to be a rent payment, would
2 you include it or not include it?

3 A. We did not include it.

4 Q. And so this would be an example of something that you
5 wouldn't include if you saw it as far as a cash deposit?

6 A. If it was a cash deposit, yes.

7 **MR. SINGER:** Okay. And if you can advance to page
8 26, Ms. Champoux.

9 **BY MR. SINGER:**

10 Q. And, so, as far as this one particular payment is made,
11 it looks like based on the deposit information it was made on
12 2/10/2017?

13 A. Yes.

14 Q. Does this look like a -- one of those legitimate rent
15 deposits that Ms. Papierski made during her tenancy?

16 A. Yes.

17 Q. So, as far as the draw, I'm going to direct your
18 attention to the top of the money order in the middle. Do
19 you see the one notation there, sir, in the middle which
20 notes 020917?

21 A. Yes.

22 Q. In your experience, does that normally reflect when the
23 money order is produced?

24 A. Yes.

25 Q. So it appears in this situation, if this was for rent for

1 that month, Ms. Papierski may have paid a little late?

2 A. Yes.

3 Q. If this was a cash deposit, is this an example of

4 something that you wouldn't include in your analysis based on

5 the fact that it was beyond the five business days?

6 A. Correct. If this was a cash deposit, we would not have

7 included this.

8 **MR. SINGER:** Okay. And you can take that exhibit
9 down, Ms. Champoux, thank you.

10 **BY MR. SINGER:**

11 Q. So, is it fair to say that you took a little bit of a

12 conservative approach when you were doing your analysis?

13 A. Yes.

14 Q. And is it also fair to say that your approach may not

15 account for every deposit that was made on rent?

16 A. It does not.

17 Q. So, when you reviewed Mr. Bongiovanni's banking records,

18 explain for the jury what it is that you saw regarding rent

19 payments -- or, sorry, what you saw regarding cash deposits

20 in the beginning part or end of a month?

21 A. In his --

22 Q. Yeah, that was a bad question. Let me ask that again,

23 I'm sorry. So when you were reviewing Mr. Bongiovanni's

24 banking records and you were looking for cash deposits made

25 in the beginning part of a month within five business days of

1 when rent's due, or a little bit before that, within five
2 days of the rent coming due, what did you notice?

3 A. Most months had a deposit made in them. Not every month,
4 but most months, especially once the parents moved in.

5 Q. And when you take a look at what you saw in the deposit
6 information, did these deposits change in any way some of the
7 conclusions Ms. Bifano reached in her one exhibit, 337-3,
8 that you saw earlier?

9 A. Yes.

10 Q. How so?

11 A. It would have --

12 **MR. DICKSON:** Objection. Improper opinion --

13 **THE COURT:** Overruled.

14 **MR. DICKSON:** -- to Ms. Bifano's testimony.

15 **THE COURT:** No.

16 **THE WITNESS:** It decreased the bottom number, that
17 \$73,000 shortfall.

18 **BY MR. SINGER:**

19 Q. Did you prepare some charts and graphs to help --

20 **THE COURT:** Let's take a break right now.

21 **MR. SINGER:** Sure, Judge. Absolutely.

22 **THE COURT:** We're going take our morning break, so
23 please remember my instructions not to talk about the case,
24 even with each other, and not to make up your mind. See you
25 back here in about 15 minutes.

10:45AM 1 (Jury excused at 10:45 a.m.)

10:45AM 2 **THE COURT:** Let's excuse the witness.

10:45AM 3 (Witness excused at 10:45 a.m.)

10:46AM 4 **THE COURT:** So Ms. Bifano testifies not as an expert
10:46AM 5 that there are these large cash deposits that are
10:46AM 6 unconnectable to anything that you're gonna ask the jury to
10:46AM 7 infer came from bribes.

10:46AM 8 This witness is testifying not as an expert that
10:46AM 9 there is a possible explanation for those cash deposits
10:46AM 10 contrary to Ms. Bifano's testimony.

10:46AM 11 Tell me why it would -- it's just so fundamentally
10:46AM 12 unfair to me to allow you to put on Ms. Bifano to testify to
10:46AM 13 that and not to allow the defense to say, you know what?
10:46AM 14 There is a flaw or, in my opinion, there is a possible
10:47AM 15 explanation of where that money came from.

10:47AM 16 Tell me why it's fair to let you put that in, and to
10:47AM 17 stop the defense from putting in their counter explanation?

10:47AM 18 **MR. DICKSON:** Because respectfully, Judge, there are
10:47AM 19 Rules of Evidence and Rules of Criminal Procedure that govern
10:47AM 20 what is and is not fair in terms of the proof here.

10:47AM 21 **THE COURT:** And you tell me what's -- and you tell me
10:47AM 22 what's fair about the way you want me to do this.

10:47AM 23 **MR. DICKSON:** What I'm asking the Court to do is to
10:47AM 24 follow what the government's interpretation is of Rule 702,
10:47AM 25 701, and Rule 16 of the Federal Rules of Criminal Procedure.

THE COURT: But you don't to -- just as we had the argument before, you don't want to tell me what's fair about that, do you?

MR. DICKSON: Judge, I can't tell you what's fair about it because you get to be the arbiter of the facts --

THE COURT: I understand that, but I want to hear what you think -- I want to hear what you think is fair about this. I want to --

MR. DICKSON: And I'm trying.

THE COURT: -- hear what you think is fair about letting the government put on someone to testify that these things are likely bribes, and not allow --

MR. DICKSON: That's not what she said.

THE COURT: Well, she said that there's -- that they're untraceable. And you're going to argue that they came from bribes.

MR. DICKSON: Exactly. Which is the proper --

THE COURT: And he's going to say that they're untraceable, but that there's a possible other explanation for that.

MR. DICKSON: Exactly.

THE COURT: What's wrong with that?

MR. DICKSON: That's perfectly fine for both parties to do in summation. The issue is when a witness draws the conclusion.

Ms. Bifano did not draw any conclusions about the source of cash. She did not tell this jury that that cash was bribe money. The difference is --

THE COURT: She said that there was -- she -- she did draw a conclusion there was no way to make an assumption about where that money came from.

MR. DICKSON: She said there was no way to trace cash. That's not a conclusion. And it's not different from what this witness said.

This witness is doing exactly what Ms. Bifano did not. He is drawing a conclusion about the source of cash deposits.

THE COURT: He's not.

MR. DICKSON: That is an expert conclusion, and --

THE COURT: He's not.

MR. DICKSON: -- it is based on improper expert opinion, it is based on hearsay, and it is based on if he's offering the opinion, the Court has not required the defense to meet the notice requirements of Rule 16.

This isn't about what I think is fair or not, this is about what the Rules of Evidence and the Rules of Criminal Procedure require. The defense hasn't followed those rules in order to have this witness testify today.

THE COURT: Did you not know that this witness was going to testify that -- to exactly what he's testifying to?

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MR. DICKSON: No, Judge, we got --

THE COURT: You didn't know that?

MR. DICKSON: -- these charts --

THE COURT: You honestly didn't know --

MR. DICKSON: That I didn't know that --

THE COURT: He's --

MR. DICKSON: -- cash --

THE COURT: -- he's not --

MR. DICKSON: -- deposits were --

THE COURT: -- I have not --

MR. DICKSON: -- rent?

THE COURT: -- heard him say once --

MR. DICKSON: He's said that through --

THE COURT: No, he's not.

MR. DICKSON: -- respectfully.

THE COURT: He's saying -- he's said --

MR. DICKSON: -- from the parents' account in the --

THE COURT: -- the amount of rent payments. And he --

MR. DICKSON: -- sists, cash deposits, in Mr. Bongiorno --

THE COURT: -- same -- he hasn't said this explicitly --

MR. DICKSON: -- g to say this -- in approximately

THE COURT: You didn't know that?

MR. DICKSON: -- these charts --

THE COURT: You honestly didn't know that? When he stand this morning, you honestly didn't know that?

MR. DICKSON: That I didn't know that he was going to
hat these were rent? That the --

THE COURT: He's --

MR. DICKSON: -- cash --

THE COURT: -- he's not --

MR. DICKSON: -- deposits were --

THE COURT: -- I have not --

MR. DICKSON: -- rent?

THE COURT: -- heard him say once that these were
have not heard him say once --

MR. DICKSON: He's said that throughout his
life, Your Honor --

THE COURT: No, he's not.

MR. DICKSON: -- respectfully.

THE COURT: He's saying -- he's saying he sees
ls from the parents' account in the amount --
te amount of rent payments. And he's saying that he
sits, cash deposits, in Mr. Bongiovanni's account at
same -- he hasn't said this explicitly, but I assume
g to say this -- in approximately the same amount.

1 And you're telling me that when he took the stand
2 this morning, this comes as a complete surprise to you?

3 Because if it is, if you can tell me that, we will at
4 the conclusion of his direct adjourn, and you can have as much
5 time as you want to come up with an effective way to
6 cross-examine him. If you didn't know that, you tell me, and
7 we will give you enough time that -- as much time as you
8 need --

9 **MR. DICKSON:** I'm not --

10 **THE COURT:** -- to prepare to cross --

11 **MR. DICKSON:** -- asking for more --

12 **THE COURT:** -- examine him.

13 **MR. DICKSON:** -- I'm not asking for more time, Judge.

14 What I'm asking is that the Court require the defense
15 to follow the Rules of Criminal Procedure and the Rules of
16 Evidence.

17 The witness has not testified and cabined his
18 testimony in the way that the Court just cabined it.

19 What the Court said, I don't have any problem with,
20 with the caveat of what we argued yesterday.

21 What the Court said seems like something he could
22 testify to.

23 He, Fred Bongiovanni, took a deposit out on this
24 date, Joe Bongiovanni deposited cash on this date. If that's
25 what the --

25 | **THE COURT:** -- you don't think --

10:51AM

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25 | And I think that you knew very well what he was gonna testify

1 to, as I said. If you needed more, I mean, I don't know why
2 there would be a Daubert hearing on this as to -- as to, I
3 mean, he's testifying to -- Daubert would mean that he's not
4 qualified to give the opinions that he's giving.

5 **MR. DICKSON:** No, a Daubert hearing could be both
6 about his qualification and about the methodology or facts and
7 data that he used to form his opinion.

8 **THE COURT:** Okay. And we know --

9 **MR. DICKSON:** Our issue is that yesterday, he had a
10 different methodology than he suddenly has today. We would
11 have been allowed --

12 **THE COURT:** You mean -- you mean the five days versus
13 the ten days?

14 **MR. DICKSON:** The five days versus whatever he was
15 testifying to yesterday where sometimes it was one way, and
16 sometimes it was another way.

17 If this was an expert who came up here, Judge, in a
18 Daubert hearing and said my methodology is that sometimes I
19 included cash deposits from the 1st, sometimes I didn't.
20 Sometimes I included cash deposits from the end of the month,
21 sometimes I didn't. I think we would have a very real Daubert
22 hearing and Rule 702 inquiry into whether that methodology was
23 reliable.

24 **THE COURT:** I don't. I don't think it's even close.
25 I don't think it's even close.

1 I think to say that he used within five business days
2 of the end of the month, five business days at the beginning
3 of the month. If it's \$100 deposit, I don't count it. If
4 it's 750 or close to it, I do. That's -- that is plenty good
5 enough for me.

6 This -- this is something -- this is something I
7 understand, and I am a mental midget when it comes to numbers.
8 This is something that I get.

9 And so I would think that the government would get
10 it, and I think the defense has given plenty of notice.

11 And while I have sustained hearsay objections, and
12 I'll continue to sustain those, and while -- if he goes beyond
13 what I understand his testimony to be, I will sustain your
14 objections.

15 I -- I -- I couldn't disagree with you more, and I
16 think it would be fundamentally unfair to preclude the
17 defendant from putting on this kind of proof.

18 **MR. DICKSON:** I understand, Judge.

19 I will just say for record purposes, I think the
20 notice point that the Court is making is not -- is not an
21 appropriate point to make in this regard. We got the
22 underlying data that this witness is using at 7:30 p.m. last
23 night. I'm not asking --

24 **THE COURT:** Do you want to --

25 **MR. DICKSON:** -- for more time. I'm not asking for

1 more time. But if the Court is premising some of its decision
2 off of us having plenty of notice, I think it is worth noting
3 that the notice we got of this underlying data was at
4 7:30 p.m. last night, and it was different data that we got at
5 8:30 p.m. the night before.

6 **THE COURT:** Okay. And I want to make it clear that
7 you can have as much -- as far as that notice goes, you can
8 have as much time as you want to prepare your cross. As much
9 time as you want. Do you want a week? We'll go off for a
10 week. Okay?

11 **MR. DICKSON:** Understood.

12 **THE COURT:** Anything else?

13 **MR. SINGER:** No, Your Honor.

14 **THE COURT:** Okay. Thank you. See you in about 15
15 minutes.

16 **THE CLERK:** All rise.

17 (Off the record at 10:56 a.m.)

18 (Back on the record at 11:13 a.m.)

19 (Jury not present.)

20 **THE CLERK:** All rise.

21 **THE COURT:** Please be seated.

22 **THE CLERK:** We are back on the record for the
23 continuation of the jury trial in case number 19-cr-227,
24 United States of America versus Joseph Bongiovanni.

25 All counsel and parties are present.

11:13AM 1 **THE COURT:** Okay. Sometimes judges wake up on the
11:13AM 2 wrong side of the bed, and evidently I did this morning,
11:13AM 3 although I didn't realize it until about a half hour ago. I
11:14AM 4 apologize, Mr. Dickson, for the abrupt manner in which I
11:14AM 5 handled myself. So let me try to explain a little bit -- in a
11:14AM 6 little bit more dispassionate way what my finding is.

11:14AM 7 So I do not believe that this witness is testifying
11:14AM 8 to an expert opinion under Rule 702 because I don't believe
11:14AM 9 that his testimony requires any special knowledge, skill,
11:14AM 10 experience, training, or education.

11:14AM 11 I think what he's testifying to is an -- so, for
11:14AM 12 instance, the opinion or the -- the opinion that the rent
11:14AM 13 payment, or the money order payment that came in on the 15th
11:14AM 14 of the month was a late rent payment. I think that is an
11:14AM 15 opinion of a lay witness. I think it's rationally based on
11:15AM 16 his perception. I think it's helpful to understanding his
11:15AM 17 testimony, he's using that as a reason for what he's going to
11:15AM 18 testify to with respect to the cash, and it's not based on
11:15AM 19 scientific, technical, or other specialized knowledge.

11:15AM 20 As I said, I think I can reach that conclusion that
11:15AM 21 if somebody's paying by money order the 1st of the month every
11:15AM 22 month, and then there's a money order one month that comes in
11:15AM 23 on the 15th, that that's a late rent payment. So I think
11:15AM 24 that's why that comes in.

11:15AM 25 I think that with respect to the cash payments, he's

1 really doing nothing different.

2 So, Ms. Bifano testified that there's no way to know
3 where those cash payments came -- cash deposits came from. He
4 is suggesting that there may be a way to find or to -- to
5 surmise where those cash deposits came from. And I think that
6 is, again, a lay opinion.

7 I think all he's doing is crunching numbers, the same
8 way Ms. Bifano crunched numbers to come up with her chart.
9 He's doing the same thing here.

10 If he expresses an opinion that these are rent
11 payments, I think that that would be improper. And maybe
12 there's where your Daubert motion comes in, because he's got
13 no basis to express that opinion that these are rent payments.

14 But he can say that there is a -- not based on
15 scientific, technical, or other specialized knowledge, reason
16 to conclude that when Mr. and Mrs. Bongiovanni Sr. withdraw
17 deposits -- or, cash from their account on June 1st, they owe
18 "X" number of dollars for rent on June 1st, and then we see a
19 deposit in the defendant's account, that that might be that
20 money going through from their account into his account.

21 I don't think that is expert opinion. I think that's
22 a lay observation. And I think that, as an accountant, he can
23 then crunch the numbers.

24 So that's the reason that I am ruling the way I'm
25 ruling. And I should not have been as passionate about my

1 analysis as I was, and I'm very sorry for that. It was
2 uncalled for.

3 **MR. DICKSON:** No worries, Judge.

4 **THE COURT:** And, as I say, sometimes judges wake up
5 on the wrong side of the bed, and I guess I did.

6 **MR. DICKSON:** No worries, Judge, thank you.

7 **THE COURT:** Thank you. Appreciate it.

8 **MR. DICKSON:** No problem.

9 **THE COURT:** Anything else we need to do before we
10 bring the jury back in?

11 **MR. SINGER:** No, Judge. We can get our witness if
12 you want us to bring him back in.

13 **THE COURT:** Anything from the government?

14 **MR. DICKSON:** No, Your Honor.

15 **THE COURT:** Okay. So let's get the witness back in,
16 and let's bring the jury in. Thank you.

17 I hate it when I do that, too. I --

18 **MR. TRIPI:** It happens.

19 **THE COURT:** You know, Mr. Tripi, right? Been there,
20 done that?

21 **MR. TRIPI:** Plenty of times.

22 **MR. SINGER:** I'm guilty of that as well.

23 (Jury seated at 11:18 a.m.)

24 **THE COURT:** The record will reflect that all our
25 jurors are present again.

11:19AM 1 I remind the witness that he's still under oath.

11:19AM 2 And, Mr. Singer, you can continue.

11:19AM 3 **MR. SINGER:** Thank you, Judge.

11:19AM 4 **BY MR. SINGER:**

11:19AM 5 Q. So, Mr. Devereaux, so we left off before the break
11:19AM 6 talking about charts that you had prepared to in some ways
11:19AM 7 reflect about these cash deposits that are going in towards
11:19AM 8 the end or the beginning of the month. And so I want to turn
11:19AM 9 to that.

11:19AM 10 Did you prepare certain charts to track what you observed
11:19AM 11 in the accounts and the numbers and the thousands of pages of
11:19AM 12 stuff that you looked at?

11:19AM 13 A. I did.

11:19AM 14 **MR. SINGER:** And so, Ms. Champoux, if you could bring
11:19AM 15 up on the witness's screen only, because it's not in evidence,
11:19AM 16 Defense Exhibit O.1, please.

11:19AM 17 **BY MR. SINGER:**

11:19AM 18 Q. Do you recognize that, sir?

11:19AM 19 A. I do.

11:19AM 20 Q. What does that appear to be?

11:19AM 21 A. This is a chart of -- I was comparing expected rent
11:20AM 22 income. So, based on the -- the rental agreements, how much
11:20AM 23 they were a month, how much you would expect to see in rental
11:20AM 24 income each month -- I'm sorry, each year compared to the
11:20AM 25 amount of checks that were deposited for rent in those years,

1 and then the cash that we -- the cash deposits that we've
2 been discussing.

3 Q. And was this produced using the various account
4 statements and data that we talked about earlier in your
5 testimony?

6 A. Correct.

7 Q. And it's a fair and accurate depiction of your
8 calculations?

9 A. Yes.

10 **MR. SINGER:** Your Honor, at this time, the defense
11 moves to enter Exhibit O.1 into evidence.

12 **MR. DICKSON:** Other than what we've already objected
13 to, no objection.

14 **THE COURT:** Okay. So it's admitted over the
15 government's objection.

16 **(DFT Exhibit O.1 was received in evidence.)**

17 **MR. SINGER:** And, Colleen, if we can publish that to
18 the jury.

19 **BY MR. SINGER:**

20 Q. This is the chart that we were talking about, right,
21 Mr. Devereaux?

22 A. Right.

23 Q. Let's start off with the colors. So what is this purple
24 bar over on the right side of each of the years represented?

25 A. So the purple bar is the rental income that we would

1 expect to see based on the rental agreements that he had with
2 the tenants. So each monthly, you know, each -- 12 months
3 times how much rental income per those agreements per month.

4 Q. Okay. So, for instance, like if we were talking about
5 year 2014, we're talking about Frederick and Maria
6 Bongiovanni living in the downstairs apartment?

7 A. Correct.

8 Q. And we're talking about the Whalen brothers living in the
9 upstairs apartment?

10 A. Yes.

11 Q. And then you're basically adding up the two figures for
12 the rent that you expect to see, and that's how you get to
13 the purple bar?

14 A. Correct.

15 Q. And as far as on the left side of the purple is the
16 chart. Let's talk about the blue areas on that bar. What
17 are those reflecting?

18 A. Those are deposits made by check or money order.

19 Q. And so how did you determine what was a check by your
20 analysis of the documents and looking through them?

21 A. I would say -- most of the time the check said rent, or
22 it was from a person that, you know, you could identify as
23 living in one of the -- living in the upper apartment.

24 Q. I think all of us have experience in looking at our bank
25 statements from time to time, so I'm not going to belabor the

11:22AM 1 point. But when you pull banking records, does that include
11:22AM 2 the information like we were looking at from Frederick
11:22AM 3 Bongiovanni's statements?

11:22AM 4 A. Yes.

11:22AM 5 Q. And does it also sometimes include if you -- if you have
11:22AM 6 checks that you write, cancelled checks, or deposited checks
11:22AM 7 with endorsements on them?

11:22AM 8 A. Correct.

11:22AM 9 Q. And so that's --

11:22AM 10 A. Yes.

11:22AM 11 Q. -- what you're looking --

11:22AM 12 A. Yes.

11:22AM 13 Q. -- at when you're reviewing the documents?

11:22AM 14 A. Yes.

11:22AM 15 Q. And as far as the green shaded areas on those bars, what
11:22AM 16 is that representing?

11:22AM 17 A. These represent the cash deposits that we've been
11:22AM 18 discussing.

11:22AM 19 Q. Okay. So the cash deposits, you're talking about that
11:23AM 20 happened within the five business days before the 1st --

11:23AM 21 A. Yes.

11:23AM 22 Q. -- or after the 1st of the month?

11:23AM 23 A. Sorry, yes.

11:23AM 24 Q. And that's got to be, you know, at some larger amount
11:23AM 25 that's more reflective of a deposit, correct?

11:23AM

1 A. Yes.

11:23AM

2 Q. Okay. And so I notice that you stack those two blue and
3 green bars on top of each other in certain years; is that
4 right?

11:23AM

5 A. That's correct.

11:23AM

6 Q. Why do you do that?

11:23AM

7 A. To show total amount the that was the check deposit and
8 deposited by cash, be able to compare that to the expected
9 rent.

11:23AM

11:23AM

10 Q. Okay. And so in a perfect scenario, the purple bar is
11 going to match the blue and green bars in height; is that
12 right?

11:23AM

11:23AM

13 A. That's correct.

11:23AM

14 Q. And the heights equal the amounts of expected rent that
15 you would potentially see on the purple side for the year?

11:23AM

16 A. Yes, that's correct.

11:23AM

17 Q. So the numbers on the left side of that axis, those are
18 representing the numbers of total rent that was expected to
19 be received for a calendar year?

11:23AM

11:24AM

20 A. Could you repeat that?

11:24AM

21 Q. Sure. No problem.

11:24AM

22 So on the left side of the axis, the circle right there,
23 what do those numbers reflect?

11:24AM

11:24AM

24 A. Yeah, the dollar amount. So as related to the purple
25 bars, it would be the total of -- total dollars we would

11:24AM

11:24AM

1 expect on to see as rental income.

2 Q. Okay. And then you see down on the bottom axis, there's
3 2012 through 2018, those are the years that we're talking
4 about?

5 A. Correct.

6 **MR. SINGER:** Okay. If we could take that down,
7 Ms. Champoux. If we can bring up Government Exhibit 337-3.

8 **BY MR. SINGER:**

9 Q. So we talked about this a little bit earlier in your
10 testimony. This is an exhibit that Ms. Bifano produced; is
11 that right?

12 A. Yes.

13 Q. And so it's your understanding by your review of the
14 chart and also listening to her testimony, that the dark
15 green bars on this chart for each calendar year, those are
16 representing documentary items of some source of income; is
17 that right?

18 A. That's right.

19 Q. So we're talking about W-2s, as an example?

20 A. Correct.

21 Q. And what else would we be talking about, about those
22 things?

23 A. Tax -- tax refunds, included in there was rent -- I'm
24 sorry, loan -- loan receipts.

25 Q. If they received a check for rent during that year, would

11:25AM 1 that be included inside of the green bar?

11:25AM 2 A. Sorry, yes, that was included as well.

11:25AM 3 Q. Okay. And your understanding also is the light green

11:25AM 4 shaded areas in 337-3, that's referring to cash deposits made

11:25AM 5 into the accounts of Mr. Bongiovanni?

11:25AM 6 A. Correct.

11:25AM 7 Q. And so it's your understanding based on Ms. Bifano's

11:26AM 8 testimony that -- that if there was any type of cash deposits

11:26AM 9 that were not in some way papered, in other words supported

11:26AM 10 by something written on a piece of paper, that represents

11:26AM 11 that light green shade of -- of unaccounted for cash

11:26AM 12 deposits; is that right?

11:26AM 13 A. Yes, that's my understanding.

11:26AM 14 Q. So -- so you looked at leasing documents; is that right?

11:26AM 15 A. Yes.

11:26AM 16 Q. Is it your understanding that Ms. Bifano did not consider

11:26AM 17 those in her analysis?

11:26AM 18 A. Correct.

11:26AM 19 Q. And as far as the dark green bars are concerned, would

11:26AM 20 you understand the analysis not to include any type of cash

11:26AM 21 payments that may have been made for rent by Frederick and

11:26AM 22 Mr. -- sorry, Frederick and Maria Bongiovanni?

11:26AM 23 A. Yes.

11:26AM 24 Q. And that's because there's nothing on paper to suggest

11:26AM 25 those?

1 A. Yes.

2 Q. So, if you were to include the deposits of a larger value
3 close to or in the beginning of the months that you
4 considered, within that five-day business period, do those
5 dark green bars on Ms. Bifano's chart change in any way?

6 A. They would.

7 Q. How do they change, sir?

8 A. The green bars, the dark green bars, would be taller.
9 And the short green, the light green bars, would be shorter.

10 **MR. SINGER:** So, I'm gonna ask, Ms. Champoux, if you
11 can bring down Exhibit 337-3, and if you can bring up for the
12 witness only Defense Exhibit O.2.

13 **BY MR. SINGER:**

14 Q. So, prior to coming into court, Mr. Devereaux, did I ask
15 you to perform, sorry, produce some type of exhibit to
16 reflect the changes when you include these cash deposits
17 being made at the beginning and end of the month?

18 A. Yes.

19 Q. And what do you recognize up on the screen right now as
20 Exhibit O.2?

21 A. This is the chart that I prepared.

22 Q. And how did you go about preparing this chart?

23 A. Took the numbers that Ms. Bifano had reflected in her
24 chart. We added the cash deposits that we had been
25 discussing that were within five days of the beginning --

1 within five days, five business days of the 1st of the month.

2 And we added those to the dark green section.

3 Q. And is this a fair and accurate depiction of the data
4 that you produced?

5 A. It is.

6 Q. It's all in substantially the same condition?

7 A. Yes.

8 **MR. SINGER:** Your Honor, at this time, the defense
9 moves to enter Exhibit O.2 into evidence.

10 **MR. DICKSON:** With the same caveat, no objection.

11 **THE COURT:** Okay. So, again, it's admitted over the
12 government's objection.

13 **(DFT Exhibit O.2 was received in evidence.)**

14 **MR. SINGER:** If we can publish that to the jury,
15 Ms. Demma.

16 All right. So, Ms. Champoux, if we can expand out
17 the chart, I know this is a little small here on the full
18 chart. Thank you.

19 **BY MR. SINGER:**

20 Q. It's a little easier to see?

21 A. Yes.

22 Q. Perfect. I want to go through and kind of explain
23 things, have you explain things to the jury.

24 So, when we're talking about the yellow bars in the right
25 of each of the years represented in this chart, what are we

11:29AM 1 talking about there, Mr. Devereaux?

11:29AM 2 A. Those are the uses or the cash outflows of the Bifanos
11:29AM 3 for those years. Of the Bongiovanni's.

11:29AM 4 Q. Is -- those yellow bars are on the right side, and as far
11:29AM 5 as the green bars are concerned, they -- they represent what?

11:29AM 6 A. The dark green bars represent the cash inflows to the
11:30AM 7 Bongiovannis, which include the cash that was documented --
11:30AM 8 considered documented with paper by Ms. Bifano, and also
11:30AM 9 includes the cash that's within five days of the 1st, five
11:30AM 10 business days within the 1st of the month that we considered
11:30AM 11 cash received for rent.

11:30AM 12 Q. So with regard to the light green shaded areas, are there
11:30AM 13 still certain years where there's unknown cash deposits that
11:30AM 14 exist inside the account?

11:30AM 15 A. Yes, there are.

11:30AM 16 Q. And those were cash deposits when you went through your
11:30AM 17 analysis that didn't occur within the five business days of
11:30AM 18 the beginning of the month or just -- sorry, five business
11:30AM 19 days before the beginning of the month or five business days
11:30AM 20 after the beginning of the month?

11:30AM 21 A. Correct.

11:31AM 22 Q. And I want to direct your attention down to the bottom of
11:31AM 23 the chart. So when we talk about the bottom numbers, what
11:31AM 24 are we talking about there again? Let's start first with the
11:31AM 25 excess or shortfall numbers.

11:31AM 1 A. So the excess and the shortfall numbers were, excuse me,
11:31AM 2 were would be the difference between the combination of the
11:31AM 3 dark green and light green bars versus the yellow bars.

11:31AM 4 Q. So, I'll direct your attention to the year 2012. So for
11:31AM 5 instance, so in that year, you'd agree with me the yellow bar
11:31AM 6 is taller than the green bars on the left side?

11:31AM 7 A. Correct. So there were more uses or outflows of cash
11:31AM 8 than there were inflows.

11:31AM 9 Q. So, I know you're a CPA, and I know I am not. So when we
11:31AM 10 have numbers in that chart that are in parentheses and in the
11:31AM 11 red, what does that mean?

11:31AM 12 A. Parentheses, it would be a negative.

11:32AM 13 Q. And I'll direct your attention to 2013 on the other side
11:32AM 14 of the chart. So when we're looking at there, the numbers
11:32AM 15 are in black and they're not in parentheses. What does that
11:32AM 16 mean?

11:32AM 17 A. That would mean that there was more cash coming in than
11:32AM 18 there was uses going out.

11:32AM 19 Q. So is this a, I guess, where the term being "in the
11:32AM 20 black" comes from --

11:32AM 21 A. It is.

11:32AM 22 Q. -- for a business?

11:32AM 23 A. Yes, it is.

11:32AM 24 Q. Okay. Thank you.

11:32AM 25 So, with regard to the lower part, the excess or

1 shortfall including the end/beginning of the month cash

2 deposits, what does that reflecting, sir?

3 A. So that would be the difference between the dark green

4 bars and the yellow bar. So it would exclude the -- those

5 light green amounts that was cash that we haven't identified

6 the source of.

7 **MR. SINGER:** So if we could unexpand that,

8 Ms. Champoux. And if we can bring up, side by side, this

9 exhibit as well as 337-3.

10 So as far as the data on these charts. When you're

11 looking at the cash deposits that are made in the beginning

12 and end of the month, how does that affect the shortfall

13 numbers that Ms. Bifano presented in 337-3 versus the chart

14 produced by you in Defendant's Exhibit O.2?

15 A. Which shortfall numbers? The top line or the --

16 Q. Sure, and I guess I'll direct your attention down to the

17 bottom right of each chart that's produced.

18 A. So it decreases the shortfall over the period of 2012 to

19 2018 to \$16,633.

20 Q. So if that 16,633 figure, if that's averaged out over the

21 eight-year period between 2012 and 2018, you'd agree with me

22 that we're talking about an, on average, about \$2,000 a year

23 that is unaccounted for?

24 A. Yes.

25 Q. And if we further divide that by 12, we're talking about

roughly 175 bucks a month that's unaccounted for?

A. Correct.

MR. SINGER: May I just have a moment, Judge?

Thank you very much, sir.

I have no further questions, Judge.

THE COURT: Are you ready to cross, Mr. Dickson?

MR. DICKSON: Judge, I'd like to speak with these two women behind me, our forensic accountants, if I can. So if could maybe we can give our jury a long lunch and come back at 1:00?

THE COURT: Absolutely.

MR. DICKSON: Thank you.

THE COURT: So let's do that, folks. We will take our lunch break. You should remember my instructions about not communicating about the case, including with each other. Please don't use tools of technology to communicate about the case or to research anything about the case. Don't watch, or read, or listen to, any news coverage if there is any while the case is still in progress. And don't make up your mind until you start deliberating.

We'll see you back here at 1:00, Mr. Dickson, do you think? Is that good enough?

MR. DICKSON: Yes, Judge.

MS. IZZO: Judge, we have another proceeding at 1:00.

THE COURT: We have --

11:35AM 1 **MS. IZZO:** You have an oral argument. Maybe 1:30?

11:35AM 2 **THE COURT:** Let's come back at 1.

11:35AM 3 Get them either earlier or later.

11:35AM 4 Let's come back at 1. Thanks.

11:35AM 5 **MS. IZZO:** Okay.

11:35AM 6 (Jury excused at 11:35 a.m.)

11:36AM 7 **THE COURT:** Okay. Let me instruct the witness not to

11:36AM 8 talk to anybody during the break about this case. Thank you.

11:36AM 9 (Witness excused at 11:36 a.m.)

11:36AM 10 **THE COURT:** Anything we need to put on the record

11:36AM 11 from the government?

11:36AM 12 **MR. DICKSON:** No, Your Honor.

11:36AM 13 **THE COURT:** Anything from the defense?

11:36AM 14 **MR. SINGER:** No, Your Honor.

11:36AM 15 **THE COURT:** Okay. We'll see you folks at 1. If we

11:36AM 16 have to wait a little bit because my other matter can't get

11:36AM 17 changed, we'll just wait a minute.

11:36AM 18 **MR. TRIPI:** Judge, if it's not complex and you can't

11:36AM 19 find another AUSA, I'm happy to stand in for --

11:36AM 20 **THE COURT:** It's an oral argument.

11:36AM 21 **MR. TRIPI:** Oh, it is? Okay. I'll see my way out of

11:36AM 22 that.

11:36AM 23 **MR. SINGER:** Does that qualify as complex?

11:36AM 24 **MS. IZZO:** We'll tell Mr. Mango that you would have

11:36AM 25 subbed for him.

11:36AM 1 (Off the record at 11:36 a.m.)

11:36AM 2 (Back on the record at 1:05 a.m.)

01:05PM 3 (Jury not present.)

01:05PM 4 **THE CLERK:** All rise.

01:05PM 5 **THE COURT:** Please be seated.

01:05PM 6 **THE CLERK:** We are back on the record for the
01:05PM 7 continuation of the jury trial in case number 19-cr-227,
01:05PM 8 United States of America versus Joseph Bongiovanni.

01:05PM 9 All counsel and parties are present.

01:05PM 10 **THE COURT:** Okay. Good afternoon. Mr. Cotter was in
01:05PM 11 the courtroom again today, and one of the jurors remarked that
01:05PM 12 she knows Mr. Cotter. He was, I think, just watching because
01:05PM 13 he had another matter here before me earlier. We've already
01:05PM 14 vetted this.

01:05PM 15 **MR. SINGER:** I don't think there's any reason for
01:05PM 16 inquiry Judge, no.

01:05PM 17 **MR. COOPER:** I agree, I spoke to Dave in the back.
01:05PM 18 He said he was popping in to watch, and we already spoke to
01:05PM 19 the juror about the issue.

01:05PM 20 **THE COURT:** We did. I appreciate them telling us
01:05PM 21 again, but --

01:05PM 22 **MR. COOPER:** Agreed.

01:05PM 23 **THE COURT:** Are you ready, Mr. Dickson?

01:05PM 24 **MR. DICKSON:** Yes, Judge.

01:05PM 25 **THE COURT:** Okay. Anything we need to put on the

record before we begin the cross?

MR. SINGER: No, Your Honor.

THE COURT: Anything from the government?

MR. DICKSON: No, Your Honor.

MR. TRIPI: No, Your Honor.

THE COURT: Let's bring them back, please, Pat.

(Jury seated at 1:07 p.m.)

THE COURT: Okay. Welcome back, everybody.

One of you noted that a lawyer who you had previously told us you knew was in the courtroom again today, and we appreciate that, that's wonderful that you are following my instructions to tell us if anybody you know is in the courtroom. But we've already vetted that, so there's no reason to revisit it now. The lawyer was simply watching, actually, as a lot of people have been doing over the last six or seven weeks.

So the record will reflect that all our jurors are again present.

I remind the witness that he's still under oath.

And, Mr. Dickson, you may begin.

MR. DICKSON: Thank you, Judge.

CROSS-EXAMINATION BY MR. DICKSON:

Q. Mr. Devereaux, let's just get this straight right off the bad bat. You have absolutely no idea whether Joe Bongiovanni

01:08PM 1 took bribes, do you?

01:08PM 2 A. I do not.

01:08PM 3 Q. You're an accountant, right?

01:08PM 4 A. Correct.

01:08PM 5 Q. You work for an accounting firm; is that correct?

01:08PM 6 A. Yes.

01:08PM 7 Q. Primarily, Mr. Devereaux, you get hired by companies; is

01:08PM 8 that right?

01:08PM 9 A. Correct.

01:08PM 10 Q. And I think you told us a little bit on direct

01:08PM 11 examination that you do audits for those companies?

01:08PM 12 A. Yes.

01:08PM 13 Q. Meaning you review the company's books; is that right?

01:08PM 14 A. Yes.

01:08PM 15 Q. You look at, maybe, their profit and loss statements; is

01:08PM 16 that right?

01:08PM 17 A. Yes.

01:08PM 18 Q. So ensure that things within the company's finances are

01:08PM 19 whatever they want the finances to look like; is that

01:08PM 20 correct?

01:08PM 21 A. Right.

01:08PM 22 Q. Now, as an accountant, Mr. Devereaux, you developed some

01:09PM 23 specialties; is that fair to say?

01:09PM 24 A. Yes.

01:09PM 25 Q. You, for example, specialize in working with companies in

01:09PM 1 the construction business, right? That's one of your
01:09PM 2 specialties?

01:09PM 3 A. Yes.

01:09PM 4 Q. You specialize in working with companies that are in the
01:09PM 5 manufacturing business, right?

01:09PM 6 A. Yes.

01:09PM 7 Q. You specialize in working with companies for their
01:09PM 8 employees benefit plans; is that right?

01:09PM 9 A. Yes.

01:09PM 10 Q. Now you would agree with me, Mr. Devereaux, that this
01:09PM 11 case is not a case about construction companies, right?

01:09PM 12 A. No, it's not.

01:09PM 13 Q. This case, Mr. Devereaux, is not a case about
01:09PM 14 manufacturing companies, right?

01:09PM 15 A. Correct.

01:09PM 16 Q. This case is not a case about employee benefit programs,
01:09PM 17 right?

01:09PM 18 A. Right.

01:09PM 19 Q. This is a criminal matter, correct?

01:09PM 20 A. Yes, sir.

01:09PM 21 Q. And you told us, Mr. Devereaux, that you have never
01:09PM 22 actually worked on a criminal investigation before; is that
01:09PM 23 right?

01:09PM 24 A. That's correct.

01:09PM 25 Q. You have never testified in a criminal case; is that

01:09PM

1 fair?

01:09PM

2 A. Yes.

01:09PM

3 Q. You also told us that you specialize in I think you said,

01:09PM

4 bankruptcy; is that right?

01:09PM

5 A. When I worked at a prior firm, we did. I don't -- I no

01:10PM

6 longer do that.

01:10PM

7 Q. You did bankruptcy work previously?

01:10PM

8 A. Correct.

01:10PM

9 Q. This isn't a bankruptcy case, right?

01:10PM

10 A. No.

01:10PM

11 Q. You told us -- I think Mr. Singer asked you whether

01:10PM

12 you've ever looked at an individual's financial records

01:10PM

13 outside of this case; is that right?

01:10PM

14 A. Yes.

01:10PM

15 Q. And you said that you had, but that it was for a debtor

01:10PM

16 in a bankruptcy proceeding, right?

01:10PM

17 A. Correct.

01:10PM

18 Q. And this again is not a bankruptcy proceeding, true?

01:10PM

19 A. True.

01:10PM

20 Q. Mr. Bongiovanni is not a debtor in a bankruptcy

01:10PM

21 proceeding, right?

01:10PM

22 A. Correct.

01:10PM

23 Q. But in this case, nonetheless, you were hired to work on

01:10PM

24 behalf of Mr. Bongiovanni, true?

01:10PM

25 A. Yes.

01:10PM 1 Q. And you're getting paid for your work on behalf of

01:10PM 2 Mr. Bongiovanni, right?

01:10PM 3 A. Yes.

01:10PM 4 Q. Mr. Devereaux, you are charging \$315 an hour for your
01:10PM 5 work for Mr. Bongiovanni, aren't you?

01:10PM 6 A. Yes.

01:10PM 7 Q. You have another partner at your firm who's helped you
01:11PM 8 with this case, right?

01:11PM 9 A. Correct.

01:11PM 10 Q. He's also charging \$315 an hour for his work for
01:11PM 11 Mr. Bongiovanni, right?

01:11PM 12 A. Yes.

01:11PM 13 Q. And you have an associate also working for
01:11PM 14 Mr. Bongiovanni, right?

01:11PM 15 A. Yes.

01:11PM 16 Q. And he's charging \$163 an hour, true?

01:11PM 17 A. Yes.

01:11PM 18 Q. Is that right?

01:11PM 19 A. Yes.

01:11PM 20 Q. I don't have the latest receipts, Mr. Devereaux, but as
01:11PM 21 of March 2nd, so about a month ago, your firm has charged
01:11PM 22 \$33,000 for your work for Mr. Bongiovanni; is that right?

01:11PM 23 A. That sounds correct, yes.

01:11PM 24 Q. And that was before Stephanie Bifano ever testified,
01:11PM 25 right?

01:11PM

1 A. Yes.

01:11PM

2 Q. You sat during Ms. Bifano's testimony at this table right

01:11PM

3 back here, right?

01:11PM

4 A. Yes.

01:11PM

5 Q. You listened to her whole entire testimony, right?

01:11PM

6 A. Yes.

01:11PM

7 Q. She was on the stand for a few hours, right?

01:11PM

8 A. Correct.

01:11PM

9 Q. And you charged \$315 an hour to listen to Ms. Bifano

01:12PM

10 testify; is that true?

01:12PM

11 A. That's true.

01:12PM

12 Q. Sitting here today, Mr. Devereaux, still charging money,

01:12PM

13 right?

01:12PM

14 A. Yes.

01:12PM

15 Q. For your testimony here today, you're still charging \$315

01:12PM

16 an hour?

01:12PM

17 A. Yes.

01:12PM

18 Q. Now, you sat through Ms. Bifano's financial presentation

01:12PM

19 before she ever testified in court; is that right?

01:12PM

20 A. Correct.

01:12PM

21 Q. When was that?

01:12PM

22 A. Middle of December, I believe. I don't remember the

01:12PM

23 exact date.

01:12PM

24 Q. And you charged for your time sitting through her

01:12PM

25 presentation then, right?

01:12PM 1 A. Yes.

01:12PM 2 Q. And, Mr. Devereaux, you believed that if you just simply
01:12PM 3 agreed with everything Ms. Bifano said, you might not be able
01:12PM 4 to keep charging money, right?

01:12PM 5 A. Can you repeat that question?

01:12PM 6 Q. I'm asking about your belief. If you went into that
01:12PM 7 meeting with Ms. Bifano, you looked at her analysis and you
01:12PM 8 just said, I agree, she's right, you thought you might not be
01:12PM 9 able to continue charging money to work for Mr. Bongiovanni;
01:13PM 10 is that right?

01:13PM 11 **MR. SINGER:** Objection to the form of the question.

01:13PM 12 **THE COURT:** No, overruled.

01:13PM 13 **BY MR. DICKSON:**

01:13PM 14 Q. I'll ask it again, Mr. Devereaux.

01:13PM 15 You believed that if you sat through Ms. Bifano's
01:13PM 16 testimony or her presentation, and you just simply agreed
01:13PM 17 with everything she said, you might not be able to keep
01:13PM 18 charging money by working for Mr. Bongiovanni?

01:13PM 19 A. If there's anything else that the defense team didn't
01:13PM 20 want us to look into, yeah, we probably wouldn't be able to.

01:13PM 21 Q. Let's talk about what else you offered to do for
01:13PM 22 Mr. Bongiovanni.

01:13PM 23 Now as an accountant, you told us that your job really is
01:13PM 24 to review financial records, correct?

01:13PM 25 A. Correct.

01:13PM 1 Q. But you, Mr. Devereaux, offered to do more than that for
01:13PM 2 Mr. Bongiovanni, didn't you?

01:13PM 3 A. I don't know what -- I'm not following you.

01:13PM 4 Q. Okay. Let me ask this. You actually offered this
01:13PM 5 defense team to help track down a witness, right?

01:13PM 6 A. I did, yes.

01:13PM 7 Q. You offered to help track down one of Mr. Bongiovanni's
01:14PM 8 tenants, right?

01:14PM 9 A. Correct.

01:14PM 10 Q. Because you thought that doing that would be helpful to
01:14PM 11 Mr. Bongiovanni?

01:14PM 12 A. Yes.

01:14PM 13 Q. Now, let's talk about your data and some of your analysis
01:14PM 14 for a second.

01:14PM 15 You would agree with me, Mr. Devereaux, that as an
01:14PM 16 accountant, it's important to be accurate, right?

01:14PM 17 A. Yes.

01:14PM 18 Q. It's important to be thorough, right?

01:14PM 19 A. Yes.

01:14PM 20 Q. It's important to review all of the pertinent data,
01:14PM 21 right?

01:14PM 22 A. Yep.

01:14PM 23 Q. And it's important to draw conclusions only based off of
01:14PM 24 what the data and the records say, true?

01:14PM 25 A. Yes.

01:14PM 1 Q. Now, you were in this courthouse yesterday, too, right?

01:14PM 2 A. Yes.

01:14PM 3 Q. And you were ready to testify, true?

01:14PM 4 A. Yes.

01:14PM 5 Q. And while the jury was in their back room over there, you

01:14PM 6 actually did come in, right?

01:14PM 7 A. I did.

01:14PM 8 Q. And you sat right there?

01:15PM 9 A. Yes.

01:15PM 10 Q. And I stood right here, right?

01:15PM 11 A. Yes.

01:15PM 12 Q. And I asked you some questions?

01:15PM 13 A. You did.

01:15PM 14 Q. And yesterday, Mr. Devereaux, we looked at some charts

01:15PM 15 that you had prepared, right?

01:15PM 16 A. We did.

01:15PM 17 Q. And your charts were wrong?

01:15PM 18 A. They were.

01:15PM 19 Q. There were errors in your data?

01:15PM 20 A. Yes.

01:15PM 21 Q. There were errors in your charts?

01:15PM 22 A. Yes. We made last-minute changes to some wording and --

01:15PM 23 Q. So that wasn't my question, Mr. Devereaux. My question

01:15PM 24 was: There were errors in your charts yesterday, right?

01:15PM 25 A. Yes.

01:15PM 1 Q. And after we pointed out those errors, Mr. Devereaux,
01:15PM 2 then you went back last night and you changed your charts,
01:15PM 3 right?

01:15PM 4 A. We did.

01:15PM 5 Q. You changed the data that you used, right?

01:15PM 6 A. Yes.

01:15PM 7 Q. You also changed the methodology that you used to create
01:15PM 8 those charts, right?

01:15PM 9 A. Yes.

01:15PM 10 Q. You changed the methodology that you used in your
01:15PM 11 analysis, true?

01:15PM 12 A. Yes.

01:15PM 13 Q. Because today, you told this jury that you only
01:16PM 14 considered cash deposits that happened I think you said
01:16PM 15 within five business days of the beginning or the end of the
01:16PM 16 month, right?

01:16PM 17 A. Correct.

01:16PM 18 Q. You considered those payments to be rent?

01:16PM 19 A. Yes.

01:16PM 20 Q. But yesterday, that wasn't gonna be your testimony, was
01:16PM 21 it?

01:16PM 22 A. No, it was not.

01:16PM 23 Q. Right. Yesterday you actually had a different
01:16PM 24 methodology, correct?

01:16PM 25 A. Yes.

01:16PM 1 Q. Sometimes you accounted deposits that were within the
01:16PM 2 first five days, right?

01:16PM 3 A. Correct.

01:16PM 4 Q. Sometimes you didn't?

01:16PM 5 A. Yes.

01:16PM 6 Q. Sometimes you counted deposits that were in the middle of
01:16PM 7 the month, right?

01:16PM 8 A. We did.

01:16PM 9 Q. Sometimes you didn't?

01:16PM 10 A. Right.

01:16PM 11 Q. Sometimes you accounted deposits that were made within
01:16PM 12 five business days of the end of the month, right?

01:16PM 13 A. Yes.

01:16PM 14 Q. And sometimes you didn't?

01:16PM 15 A. Yes.

01:16PM 16 Q. So you changed your methodology?

01:16PM 17 A. Yes.

01:16PM 18 Q. But you were ready to present those findings to this jury
01:16PM 19 yesterday, true?

01:16PM 20 A. True.

01:16PM 21 Q. Now, you told us already that you watched Ms. Bifano
01:17PM 22 testify, right?

01:17PM 23 A. Yes.

01:17PM 24 Q. You heard her testify about the Bongiovanni's finances
01:17PM 25 between 2012 to 2018, right?

01:17PM 1 A. Yes.

01:17PM 2 **MR. DICKSON:** I'm going to show Government

01:17PM 3 Exhibit 337-5, please, Ms. Champoux, which is already in

01:17PM 4 evidence.

01:17PM 5 **BY MR. DICKSON:**

01:17PM 6 Q. You saw this chart during Ms. Bifano's testimony, right?

01:17PM 7 A. Yes.

01:17PM 8 Q. You agree with it, right?

01:17PM 9 A. Yes.

01:17PM 10 Q. It's accurate, right?

01:17PM 11 A. Yes.

01:17PM 12 Q. It shows that the Bongiovanni's credit card debt

01:17PM 13 continued to rise between 2012 and 2018, right?

01:17PM 14 A. Yes.

01:17PM 15 Q. You'd agree with me that it looks like they were under

01:17PM 16 some financial pressure, right?

01:17PM 17 A. Yes.

01:17PM 18 Q. Financial stress, true?

01:17PM 19 A. Yes, true.

01:17PM 20 Q. You'd also agree with me, Mr. Devereaux, that in the

01:17PM 21 course of your analysis or the course of your review of the

01:18PM 22 records, despite the financial stress, you saw evidence that

01:18PM 23 the Bongiovannis continued to travel and take trips, right?

01:18PM 24 A. We did.

01:18PM 25 Q. Trips to Las Vegas?

01:18PM 1 A. Yes.

01:18PM 2 Q. Trips to Denver, right?

01:18PM 3 A. Yes.

01:18PM 4 Q. Trips to Florida?

01:18PM 5 A. I'm sorry?

01:18PM 6 Q. To Florida?

01:18PM 7 A. Yes.

01:18PM 8 Q. To California?

01:18PM 9 A. Yes.

01:18PM 10 Q. To Toronto?

01:18PM 11 A. Yes.

01:18PM 12 Q. To Saint Martin?

01:18PM 13 A. Yes.

01:18PM 14 Q. To Chicago?

01:18PM 15 A. Yes.

01:18PM 16 Q. To New York City?

01:18PM 17 A. Yes.

01:18PM 18 Q. To Scottsdale, Arizona?

01:18PM 19 A. Yes.

01:18PM 20 Q. You saw all those trips in the records, right?

01:18PM 21 A. I did.

01:18PM 22 Q. Let's talk about what else was in the records,

01:18PM 23 Mr. Devereaux.

01:18PM 24 **MR. DICKSON:** We can take this one down,

01:18PM 25 Ms. Champoux, please.

01:18PM

1

BY MR. DICKSON:

01:18PM

2

Q. Now, on direct examination with Mr. Singer, you told the

01:18PM

3

jury that you saw evidence -- I think you called them

01:18PM

4

everyday purchases that the Bongiovannis made with their

01:18PM

5

credit cards, right?

01:18PM

6

A. Yes.

01:18PM

7

Q. To be clear, Mr. Devereaux, you didn't see records of

01:19PM

8

things that they purchased with cash necessarily, right?

01:19PM

9

A. No, we saw what -- what retailers they were buying things

01:19PM

10

from.

01:19PM

11

Q. My question is about cash though, right?

01:19PM

12

A. Oh, I'm sorry.

01:19PM

13

Q. You wouldn't be able to see if --

01:19PM

14

A. Oh.

01:19PM

15

Q. -- they bought something with cash?

01:19PM

16

A. I'm sorry.

01:19PM

17

Q. So let's talk about the some of the stuff that the

01:19PM

18

Bongiovannis said that they bought.

01:19PM

19

MR. DICKSON: Ms. Champoux, can we please pull up

01:19PM

20

Government Exhibit 338A.

01:19PM

21

Judge, this is already in evidence as Government

01:19PM

22

Exhibit 338. We just marked it for ease as 338A. It's the

01:19PM

23

1040 from 2016.

01:19PM

24

THE COURT: Any objection to that being used this

01:19PM

25

way?

01:19PM

1

MR. SINGER: Just one moment, Judge?

01:19PM

2

THE COURT: Sure. This is simply an excerpt from

01:19PM

3

338, which is in evidence?

01:19PM

4

MR. DICKSON: Yes, Judge. It's -- 338, all of this

01:19PM

5

is already in evidence, we've just tried to make it a little

01:19PM

6

easier to access.

01:19PM

7

MR. SINGER: No objection, Judge.

01:19PM

8

THE COURT: Okay. So you can use this 338A that's

01:20PM

9

already in evidence.

01:20PM

10

MR. DICKSON: Ms. Champoux, can we please go to

01:20PM

11

page 11. Could we highlight the middle section there where it

01:20PM

12

says note?

01:20PM

13

BY MR. DICKSON:

01:20PM

14

Q. Mr. Devereaux, do you see this here?

01:20PM

15

A. Yes.

01:20PM

16

Q. This is one of the Bongiovanni's tax returns, right?

01:20PM

17

A. Yes.

01:20PM

18

Q. You saw -- you see on there, it says they purchased

01:20PM

19

\$3,000 worth of luggage?

01:20PM

20

A. I see \$3,000 purchase.

01:20PM

21

Q. That's my question. You see a \$3,000 purchase, right?

01:20PM

22

A. I don't see that it's for luggage.

01:20PM

23

MR. DICKSON: I apologize. We'll zoom out for you.

01:20PM

24

BY MR. DICKSON:

01:20PM

25

Q. You see up there at the top you see that it says in

01:20PM 1 row A, it says luggage?

01:20PM 2 A. Yes.

01:20PM 3 Q. Did you see a \$3,000 credit card receipt for luggage?

01:20PM 4 A. Not specifically for luggage, no.

01:20PM 5 Q. So they could have bought that in cash, right?

01:21PM 6 A. They could have.

01:21PM 7 Q. You wouldn't know?

01:21PM 8 A. I wouldn't know.

01:21PM 9 **MR. DICKSON:** Can we go to page 13? Zoom in again,
01:21PM 10 please. Can we get the top part, too, Ms. Champoux, please,
01:21PM 11 where it says what it is? Thank you.

01:21PM 12 **BY MR. DICKSON:**

01:21PM 13 Q. See this here, Mr. Devereaux?

01:21PM 14 A. Yes.

01:21PM 15 Q. See \$5,200 worth of shoes, right?

01:21PM 16 A. Yes.

01:21PM 17 Q. See where it says the Bongiovannis purchased those shoes?

01:21PM 18 A. Yes.

01:21PM 19 Q. Do you see credit card receipts totaling \$5,200 for 26
01:21PM 20 pairs of shoes?

01:21PM 21 A. I don't know where they bought the shoes from, so I would
01:21PM 22 say that no, I was not able to determine a receipt for \$5,200
01:21PM 23 in shoes.

01:21PM 24 Q. They could have purchase those with cash, right?

01:21PM 25 A. They could have.

01:21PM 1 Q. You wouldn't know?

01:21PM 2 A. I wouldn't know.

01:21PM 3 **MR. DICKSON:** Can we go to page 16? And zoom in
01:21PM 4 again, please?

01:21PM 5 **BY MR. DICKSON:**

01:22PM 6 Q. See here, Mr. Devereaux, where it says the Bongiovannis
01:22PM 7 had eight bags of clothes that they purchased for \$11,450?

01:22PM 8 A. Yes.

01:22PM 9 Q. Did you see credit card receipts totaling -- for clothing
01:22PM 10 totaling \$11,450 before 2016?

01:22PM 11 A. Once again, without knowing the retailers that they
01:22PM 12 purchase these from, I would say no, that I did not see
01:22PM 13 these.

01:22PM 14 Q. Why do you have to know the retailer that they purchased
01:22PM 15 them from?

01:22PM 16 A. You asked if I saw a receipt for those clothes. But
01:22PM 17 without knowing where they bought them from, I don't know
01:22PM 18 which credit card purchase that could be from.

01:22PM 19 Q. I'm asking in total, before 2016, in all of the credit
01:22PM 20 card receipts that you reviewed, do you see \$11,450 worth of
01:22PM 21 clothes bought on credit card?

01:22PM 22 A. Once again, I don't know what they're buying at the
01:22PM 23 retailers. We just see the retailer. We don't see, like, an
01:22PM 24 itemized receipt of what they purchased.

01:23PM 25 Q. I see. So you can't tell us whether they purchased these

01:23PM 1 clothes, \$11,450 worth of clothes --

01:23PM 2 A. Correct.

01:23PM 3 Q. -- by credit card?

01:23PM 4 A. Correct.

01:23PM 5 Q. You can't tell us if they bought them in cash?

01:23PM 6 A. Right.

01:23PM 7 Q. You just don't know, right?

01:23PM 8 A. Yes.

01:23PM 9 **MR. DICKSON:** Could we go to, let's see, Government

01:23PM 10 Exhibit 338B, please.

01:23PM 11 Same thing here, Judge, this is just a different tax

01:23PM 12 return for 2017.

01:23PM 13 **THE COURT:** And same, you don't have a problem with
01:23PM 14 it, do you?

01:23PM 15 **MR. SINGER:** No objection, Judge.

01:23PM 16 **THE COURT:** Great.

01:23PM 17 **MR. DICKSON:** Can we go to page 8, please. And zoom
01:23PM 18 in for me if you don't mind.

01:23PM 19 **BY MR. DICKSON:**

01:23PM 20 Q. All right. You see here the Bongiovannis said in 2014

01:23PM 21 they purchased a large canvas painting for \$799?

01:23PM 22 A. Yes.

01:23PM 23 Q. Did you see a credit card receipt for that?

01:23PM 24 A. I don't recall one, no.

01:23PM 25 Q. So they could have bought that in cash, right?

01:23PM 1 A. Yes.

01:23PM 2 Q. You don't know?

01:23PM 3 A. No, I don't know.

01:23PM 4 Q. You see the third item down, it says clothing, 12 large

01:24PM 5 bags, right?

01:24PM 6 A. Yes.

01:24PM 7 Q. See the Bongiovannis put they bought \$1,200 or \$4,500 --

01:24PM 8 excuse me, \$4,500 worth of clothing?

01:24PM 9 A. Yes.

01:24PM 10 Q. Can't tell us whether there are credit card receipts for

01:24PM 11 that, right?

01:24PM 12 A. Correct.

01:24PM 13 Q. Could have bought it in cash, right?

01:24PM 14 A. Yes.

01:24PM 15 Q. You don't know?

01:24PM 16 A. I don't know.

01:24PM 17 **MR. DICKSON:** Could we go to page 11, please?

01:24PM 18 **BY MR. DICKSON:**

01:24PM 19 Q. See here some furniture listed, right --

01:24PM 20 A. Yep.

01:24PM 21 Q. -- for \$17,000, right?

01:24PM 22 A. Yes.

01:24PM 23 Q. Do you see credit card receipts totaling \$17,000 at

01:24PM 24 furniture stores?

01:24PM 25 A. I do not recall seeing a receipt for them.

01:24PM 1 Q. Okay. So they could have bought that in cash, right?

01:24PM 2 A. Yes.

01:24PM 3 Q. You don't know?

01:24PM 4 A. I don't know.

01:25PM 5 **MR. DICKSON:** Can we go to page 23?

01:25PM 6 **BY MR. DICKSON:**

01:25PM 7 Q. I'm not gonna belabor this point, Mr. Devereaux, but same
01:25PM 8 question here. You see that they purchased all of this stuff
01:25PM 9 that we zoomed in on here on page 23?

01:25PM 10 A. Yes.

01:25PM 11 Q. And you don't remember or can't tell us whether there are
01:25PM 12 credit card receipts in those totals for any of that stuff,
01:25PM 13 right?

01:25PM 14 A. Correct.

01:25PM 15 Q. You don't know whether they bought any of that stuff in
01:25PM 16 cash?

01:25PM 17 A. Right.

01:25PM 18 Q. You just don't know, right?

01:25PM 19 A. Yes.

01:25PM 20 **MR. DICKSON:** Can we go to 338C? Same thing, Judge,
01:25PM 21 1040 for 2018.

01:25PM 22 **THE COURT:** I assume it's still the same position
01:25PM 23 you're taking, Mr. Singer?

01:25PM 24 **MR. SINGER:** Yes.

01:25PM 25 **THE COURT:** Thank you.

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BY MR. DICKSON:

A. I don't recall seeing specific receipts for those.

Q. Okay. So they could have bought any of that stuff in cash, right?

A. Yes.

MR. DICKSON: Could we go to page 13?

BY MR. DICKSON:

Q. Mr. Devereaux, this is another -- looks like \$12,000 worth of clothes that the Bongiovannis said they bought, right?

A. Yes.

Q. Credit card receipts that add up to \$12,000 for more clothes?

A. No.

Q. Could have bought that in cash, right?

A. Could have, yep.

MR. DICKSON: And then could we go to page 15, please?

BY MR. DICKSON:

Q. Same question here, Mr. Devereaux. Looks like a little more than \$10,000 worth of stuff the Bongiovannis bought; is that right?

01:26PM 1 A. Yes.

01:26PM 2 Q. Can't tell us that there are credit card receipts for any
01:27PM 3 of that stuff, right?

01:27PM 4 A. I cannot.

01:27PM 5 Q. Could have bought it in cash?

01:27PM 6 A. Yes.

01:27PM 7 Q. You don't know?

01:27PM 8 A. I don't.

01:27PM 9 **MR. DICKSON:** You can take that down, Ms. Champoux.

01:27PM 10 **BY MR. DICKSON:**

01:27PM 11 Q. Now you told us, Mr. Devereaux, as an accountant, it's
01:27PM 12 important to be accurate and thorough in your work, right?

01:27PM 13 A. Yes.

01:27PM 14 Q. I want to talk about cash deposits for a little bit,
01:27PM 15 okay? When a person deposits cash into a bank account,
01:27PM 16 there's no way of telling necessarily where the source of
01:27PM 17 that -- or, what the source of that cash is, right?

01:27PM 18 A. No, not unless you have some firsthand knowledge, you
01:27PM 19 know --

01:27PM 20 Q. Right.

01:27PM 21 A. -- that I saw it.

01:27PM 22 Q. So if you're just looking at bank records, the bank
01:27PM 23 records will say, for example, \$10 deposit of cash, right?

01:27PM 24 A. Yeah.

01:27PM 25 Q. It doesn't say \$10 deposit of cash for rent, right?

01:27PM

1 A. Correct.

01:27PM

2 Q. If my grandma gives me \$10 bucks for my birthday, and I

01:28PM

3 go put it in the bank, the teller doesn't ask me, hey,

01:28PM

4 where'd you get the \$10, right?

01:28PM

5 A. Right.

01:28PM

6 Q. You put cash in your bank account, right?

01:28PM

7 A. Yes.

01:28PM

8 Q. And there's no record of the source of that cash, right?

01:28PM

9 A. No.

01:28PM

10 Q. Now, in performing your analysis, you decided to conclude

01:28PM

11 that cash deposits made within the first five days of the

01:28PM

12 month were for rent, right?

01:28PM

13 A. Yes.

01:28PM

14 Q. That was your conclusion, correct?

01:28PM

15 A. Yes.

01:28PM

16 Q. Now you found those cash deposits in Mr. Bongiovanni's

01:28PM

17 bank records, right?

01:28PM

18 A. Correct.

01:28PM

19 Q. Those bank records, Mr. Devereaux, they didn't say the

01:28PM

20 source of those cash deposits, did they?

01:28PM

21 A. They did not.

01:28PM

22 Q. The bank records didn't say that those cash deposits were

01:28PM

23 for rent, right?

01:28PM

24 A. No, they don't.

01:28PM

25 Q. You don't interview the tenants yourself, did you?

01:28PM 1 A. I did not.

01:28PM 2 Q. You didn't ask them if those cash deposits matched the
01:29PM 3 amount of cash that they gave, right?

01:29PM 4 A. I did not.

01:29PM 5 Q. So, let's talk about this assumption then.

01:29PM 6 If you concluded that any cash deposit within the first
01:29PM 7 five days of the month was for rent, if even \$1 of that
01:29PM 8 wasn't from rent, your conclusion would be wrong, right?

01:29PM 9 A. Yes.

01:29PM 10 Q. So, if Mr. Bongiovanni's mom, for example, gave him a
01:29PM 11 \$100 for his birthday, and he deposited it within the first
01:29PM 12 five days of the month, your conclusion that all those cash
01:29PM 13 deposits were rent would be wrong, right?

01:29PM 14 **MR. SINGER:** Object to form of the question.

01:30PM 15 **THE COURT:** No, overruled.

01:30PM 16 **BY MR. DICKSON:**

01:30PM 17 Q. If Mr. Bongiovanni's mom gave him \$100 for his birthday,
01:30PM 18 and he deposited it within the first five days of the month,
01:30PM 19 your conclusion would be wrong?

01:30PM 20 A. We would be off by \$100.

01:30PM 21 Q. Your conclusion would be wrong. I see you looking over
01:30PM 22 at Mr. Singer, Mr. Devereaux.

01:30PM 23 I'm asking you: Your conclusion would be wrong, wouldn't
01:30PM 24 it?

01:30PM 25 A. Yes.

01:30PM 1 Q. If somebody else who wasn't a tenant gave Mr. Bongiovanni
01:30PM 2 cash and he put it into his bank account at the beginning of
01:30PM 3 the month, your conclusion would be wrong?

01:30PM 4 A. Yes.

01:30PM 5 **MR. DICKSON:** Ms. Champoux, can we please pull up
01:30PM 6 Government Exhibit 337-3 on the left, and Defense Exhibit O.2
01:30PM 7 on the right, please.

01:31PM 8 **BY MR. DICKSON:**

01:31PM 9 Q. All right. Mr. Devereaux, this chart on the right here,
01:31PM 10 that's the one that you made, right?

01:31PM 11 A. Correct.

01:31PM 12 Q. But to get to that chart, you took Ms. Bifano's chart
01:31PM 13 that's on the left here, correct?

01:31PM 14 A. Yep.

01:31PM 15 Q. Now, you listened to Ms. Bifano testify, right?

01:31PM 16 A. Yes.

01:31PM 17 Q. You heard her say that she couldn't attribute a source to
01:31PM 18 any of the cash deposits, right?

01:31PM 19 A. Yes.

01:31PM 20 Q. And you understood that she was saying she couldn't
01:31PM 21 attribute a source to the cash deposits, because cash
01:31PM 22 deposits don't come with receipts explaining what -- where
01:31PM 23 they're from, right?

01:31PM 24 A. Yes.

01:31PM 25 Q. But you did attribute a source to cash deposits?

01:31PM 1 A. We did.

01:31PM 2 Q. So you changed Ms. Bifano's chart based off of your
01:31PM 3 assumption, right?

01:31PM 4 A. Yes.

01:31PM 5 Q. Based off of your assumption about the source of cash
01:32PM 6 deposits?

01:32PM 7 A. Yes.

01:32PM 8 **MR. DICKSON:** Could we take Ms. Bifano's chart down,
01:32PM 9 please, Ms. Champoux, and just put up defense Exhibit O.2.

01:32PM 10 **BY MR. DICKSON:**

01:32PM 11 Q. I just want to make sure I'm understanding this chart
01:32PM 12 correctly, Mr. Devereaux, because I think I wasn't quite
01:32PM 13 following what the green bar is.

01:32PM 14 So can you tell me how are you defining what is included
01:32PM 15 in this green -- the dark green bar?

01:32PM 16 A. The dark green bar would be all of the income sources
01:32PM 17 that Ms. Bifano also included in hers. But we also included
01:32PM 18 the cash deposits that we attributed to rent. And we added
01:32PM 19 our -- our cash deposits for rent, we added them to her
01:32PM 20 income bar.

01:32PM 21 Q. Okay. And then what about the light green bar?

01:32PM 22 A. The light green bar would be the cash deposits that we
01:32PM 23 did not attribute to rent.

01:32PM 24 Q. Okay. So I'm going to ask this question about this
01:33PM 25 chart, Mr. Devereaux. You said that the dark green bar

1 includes any cash deposit that you assumed came from rent,
2 right?

3 A. Yes.

4 Q. So if your assumption was wrong, this chart's wrong,
5 right?

6 A. Yes.

7 Q. If Mr. Bongiovanni deposited some dollar amount at the
8 beginning of the month that wasn't from rent, this chart's
9 wrong, right?

10 A. Correct. It should be in the light green as opposed to
11 the dark green.

12 Q. Right. Like Ms. Bifano's chart, right?

13 A. Yes.

14 **MR. DICKSON:** Let's go to Defense Exhibit O.1,
15 please. Actually, I'm sorry Ms. Champoux, can we go back just
16 a second? Sorry to do that to you.

17 **BY MR. DICKSON:**

18 Q. Mr. Devereaux, I think at the end of your direct
19 examination, Mr. Singer asked you to do some math, right?

20 And he asked you to calculate, I think, sort of the per-year
21 excess or shortfall; do you remember that?

22 A. Yeah.

23 Q. And I think when you did that, you said that you were
24 dividing it by eight; is that right?

25 A. It should be divided by seven.

01:34PM 1 Q. Okay. So when you divided it by eight, that wasn't the
01:34PM 2 right math?

01:34PM 3 A. No.

01:34PM 4 Q. You should have divided it by seven?

01:34PM 5 A. By seven.

01:34PM 6 **MR. DICKSON:** We can take that down, and can we go to
01:34PM 7 0.1, please.

01:34PM 8 **BY MR. DICKSON:**

01:34PM 9 Q. The same question about this, Mr. Devereaux. What's the
01:34PM 10 green bar here supposed to represent?

01:34PM 11 A. The green bar represents the cash deposits that we
01:34PM 12 attributed to rent.

01:34PM 13 Q. Okay. And again, if your assumption is wrong about any
01:34PM 14 of those cash deposits, this chart's wrong too?

01:34PM 15 A. Yes.

01:34PM 16 **MR. DICKSON:** You can take that down, please,
01:35PM 17 Ms. Champoux.

01:35PM 18 **BY MR. DICKSON:**

01:35PM 19 Q. All right. Now I want to talk to you for a moment about
01:35PM 20 Mr. Bongiovanni's parents. You told us a second ago or an
01:35PM 21 hour ago that you assumed that Mr. and Mrs. Bongiovanni were
01:35PM 22 paying rent every month, right?

01:35PM 23 A. Yes.

01:35PM 24 Q. Based off the cash deposits that were in
01:35PM 25 Mr. Bongiovanni's bank account?

1 A. And the cash withdrawals from his father's account.

2 Q. And you base that off of a lease that you saw; is that
3 right?

4 A. Yes.

5 Q. A lease between Joe Bongiovanni and his parents, right?

6 A. Yes.

7 Q. Now, on that lease, Mr. Devereaux, you saw that the
8 parents were, according to that lease, supposed to pay 750
9 every month, right?

10 A. Correct.

11 **MR. DICKSON:** Ms. Champoux, can we please pull up
12 Government Exhibit 335 which is in evidence. And I think this
13 is in the Fred folder. And then go to --

14 **BY MR. DICKSON:**

15 Q. Well, I'm not sure which year you talked about on direct
16 examination, Mr. Devereaux. Do you remember what year you
17 and Mr. Singer were looking at cash deposits for, or cash
18 withdrawals for, for Mr. Bongiovanni?

19 A. I don't remember.

20 Q. Let me ask you it this way, then. You looked at a cash
21 withdrawal from Fred Bongiovanni on direct examination that
22 was worth \$900, right?

23 A. Yes.

24 **MR. DICKSON:** Okay. I'm being told that it was 2016,
25 so let's just look at those real quick. Thank you.

01:36PM

1

BY MR. DICKSON:

01:37PM

2

Q. Now in this 2016 year, Mr. Devereaux, you looked at a

01:37PM

3

cash withdrawal that was for \$900; is that right?

01:37PM

4

A. Yes.

01:37PM

5

Q. That's more than the lease said Mr. Bongiovanni's parents

01:37PM

6

had to pay for rent, right?

01:37PM

7

A. Yes.

01:37PM

8

Q. But you included all \$900 in your calculation, right?

01:37PM

9

A. If the deposit went into -- into -- into Joe

01:37PM

10

Bongiovanni's account, we would have, yes.

01:37PM

11

Q. The whole deposit?

01:37PM

12

A. Yes.

01:37PM

13

Q. Even though it was more than the rent that was owed,

01:37PM

14

right?

01:37PM

15

A. Yes.

01:37PM

16

Q. All right. Now, in order to build those charts that we

01:37PM

17

looked at, you had to have underlying data, right?

01:38PM

18

A. Um-hum.

01:38PM

19

Q. Is that right?

01:38PM

20

A. Yes.

01:38PM

21

Q. Because those charts just don't create themselves, right?

01:38PM

22

There's data that goes into those charts?

01:38PM

23

A. They do not just create themselves.

01:38PM

24

Q. You did that in Excel, right?

01:38PM

25

A. Yes.

01:38PM 1 Q. And to create a chart like that in Excel, you have to put
01:38PM 2 in data, correct?

01:38PM 3 A. Yes, you do.

01:38PM 4 Q. And so it's incredibly important that that underlying
01:38PM 5 data is accurate, right?

01:38PM 6 A. Yes.

01:38PM 7 Q. Who, Mr. Devereaux, created the underlying data that you
01:38PM 8 used for those charts?

01:38PM 9 A. We had -- one of the people that you had mentioned who
01:38PM 10 works for my firm, they imported all of the -- all of the
01:38PM 11 data we received, cash deposits slips, everything. And he
01:38PM 12 organized it using a tool that we have to create the data
01:38PM 13 that we then analyzed and put into the chart.

01:39PM 14 Q. So, which person at your firm? Your partner or the
01:39PM 15 associate?

01:39PM 16 A. The associate.

01:39PM 17 Q. So the associate puts all of the underlying data into
01:39PM 18 that Excel spreadsheet, right?

01:39PM 19 A. Yep. Yes.

01:39PM 20 Q. And that underlying data, that's supposed to be from the
01:39PM 21 bank records, right?

01:39PM 22 A. Yes.

01:39PM 23 Q. Did you go back and double check the bank records to make
01:39PM 24 sure they matched what the associate put in there?

01:39PM 25 A. There's tags that the thing -- that it runs and tells you

01:39PM 1 that you imported all of the pages.

01:39PM 2 Q. So you checked the tags?

01:39PM 3 A. Yeah.

01:39PM 4 Q. Did you go back and look at the bank records to make sure
01:39PM 5 that all of your data was accurate before you showed this
01:39PM 6 data to the jury?

01:39PM 7 A. Not on every occasion, no.

01:39PM 8 Q. So are you sitting here right now 100 percent confident
01:39PM 9 that all of those numbers in your underlying data sheet are
01:39PM 10 correct?

01:39PM 11 A. We saw deposit slips for all of those cash deposits that
01:39PM 12 we considered rent.

01:40PM 13 Q. That wasn't my question.

01:40PM 14 A. Oh. I'm sorry. Rent -- I'm sorry, what was the --

01:40PM 15 Q. My question is: Are you a 100 percent confident sitting
01:40PM 16 here today that all of the underlying data you used to build
01:40PM 17 those charts is accurate?

01:40PM 18 A. I would not say that every -- there is no possibility
01:40PM 19 that a transaction got missed, that is certainly a
01:40PM 20 possibility.

01:40PM 21 Q. So there is a possibility that your underlying data is
01:40PM 22 wrong?

01:40PM 23 A. Yes.

01:40PM 24 Q. And if your underlying data is wrong, your charts are
01:40PM 25 wrong, right? Those same charts that you just showed the

01:40PM 1 jury a couple hours ago, right?

01:40PM 2 A. Yes.

01:40PM 3 **MR. DICKSON:** I want to talk about the underlying

01:40PM 4 data. So I'm going to show you what we've marked as

01:41PM 5 Government Exhibit OA-2. This is not in evidence yet, Judge.

01:41PM 6 Ms. Champoux, can we pull it up for the witness, do

01:41PM 7 you have that?

01:41PM 8 **BY MR. DICKSON:**

01:41PM 9 Q. Mr. Devereaux, is this the underlying data that you used

01:41PM 10 to build your charts?

01:41PM 11 A. Yeah. So this is a -- yes, we -- we used this to create

01:41PM 12 the charts.

01:41PM 13 Q. Okay. Is does it look like a fair and accurate copy of

01:41PM 14 the underlying data that you used?

01:41PM 15 A. Yes.

01:41PM 16 **MR. DICKSON:** Judge, I'm going to offer Government

01:41PM 17 Exhibit OA-2 into evidence.

01:41PM 18 **MR. SINGER:** No objection.

01:41PM 19 **THE COURT:** Received without objection.

01:41PM 20 **(GOV Exhibit OA-2 was received in evidence.)**

01:41PM 21 **MR. DICKSON:** And can we publish that, please?

01:41PM 22 **THE CLERK:** You're all set.

01:41PM 23 **MR. DICKSON:** Thank you.

01:41PM 24 **BY MR. DICKSON:**

01:42PM 25 Q. I want to start, Mr. Devereaux, with March of 2012. Do

1 you see that column there?

2 A. Yes.

3 Q. Okay. Now, right here where I'm circling -- no, maybe

4 I'm not circling. All right. I can't seem to figure out how

5 to get this to work, but that's okay.

6 You see there where it says one of your column is check

7 deposits, right?

8 A. Yes.

9 Q. You see that that's blank, right?

10 A. Yes.

11 Q. So that means that in your analysis, Mr. Devereaux, you

12 said there were no check deposits for March of 2012 that you

13 counted as rent, right?

14 A. Yes.

15 Q. Okay.

16 **MR. DICKSON:** Ms. Champoux, can we please pull up

17 Government Exhibit 330. Could we please go to 2012 receipts.

18 And can we go to 3/3/2012. Zoom that out. All right.

19 **BY MR. DICKSON:**

20 Q. So, Mr. Devereaux, you see this here?

21 A. Yes.

22 Q. You see that this is a receipt from a transaction for

23 Joseph Bongiovanni's account?

24 A. Yes.

25 Q. Do you see the date there, March of 2012?

01:43PM 1 A. Yep.

01:43PM 2 Q. You see where it says checks in, \$700?

01:43PM 3 A. Yes.

01:43PM 4 Q. So that didn't match on your underlying data, right?

01:43PM 5 A. That did not.

01:43PM 6 Q. So your underlying data is wrong?

01:43PM 7 A. In this instance, yes.

01:43PM 8 Q. Your charts are wrong then too, right?

01:43PM 9 A. For this amount, yes.

01:43PM 10 **MR. DICKSON:** You can take that down for a second,

01:43PM 11 Ms. Champoux. And can we pull back up OA-2. Thank you.

01:43PM 12 Let's go to January of 2013.

01:43PM 13 **BY MR. DICKSON:**

01:44PM 14 Q. Do you see that there, Mr. Devereaux?

01:44PM 15 A. Yes.

01:44PM 16 Q. What does it say that your analysis included for cash
01:44PM 17 deposits?

01:44PM 18 A. Zero.

01:44PM 19 **MR. DICKSON:** Okay. Can we take that down,

01:44PM 20 Ms. Champoux, and show Government Exhibit 330 again? Could we
01:44PM 21 please go to saving receipts. And 2012 receipts, I think.

01:44PM 22 One more in there. Can we scroll to the bottom.

01:44PM 23 Oh, I might have messed that up, I'm sorry, 2013

01:44PM 24 receipts in the saving receipts folder. All right. Can we

01:44PM 25 click on 1/2/2013. Can we scroll to the top, please.

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25	A. Zero. Zero.
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01:46PM 1 **MR. DICKSON:** Could we go back to Government
01:46PM 2 Exhibit 330? Can we go to saving receipts, that same folder.
01:46PM 3 Go to 2013 to 11/4/2013.
01:46PM 4 **BY MR. DICKSON:**
01:46PM 5 Q. So this is another receipt from Mr. Bongiovanni's
01:46PM 6 accounts, right?
01:46PM 7 A. Yes.
01:46PM 8 Q. This is in November of 2013?
01:46PM 9 A. Yes.
01:46PM 10 **MR. DICKSON:** Can we scroll down.
01:46PM 11 **BY MR. DICKSON:**
01:46PM 12 Q. Do you see where it says cash in \$700?
01:46PM 13 A. Yes.
01:46PM 14 Q. Your underlying data didn't reflect that, did it?
01:46PM 15 A. It did not.
01:46PM 16 Q. Your underlying data is wrong?
01:46PM 17 A. Yes, sir.
01:46PM 18 Q. Meaning your charts are wrong, too?
01:46PM 19 A. Yes.
01:46PM 20 Q. Correct?
01:46PM 21 A. Yes, sorry.
01:46PM 22 **MR. DICKSON:** Can we go back to Government
01:46PM 23 Exhibit OA-2, and go to October of 2014?
01:46PM 24 **BY MR. DICKSON:**
01:46PM 25 Q. What does it say there for cash deposits there,

01:47PM 1 Mr. Devereaux?

01:47PM 2 A. I'm sorry, which column is the column header?

01:47PM 3 Q. I'm sorry?

01:47PM 4 A. The column headers are on the previous page.

01:47PM 5 Q. Yeah, I'm sorry about that. I think would you agree that

01:47PM 6 it's the column right under where it says 1,100? Is that the

01:47PM 7 cash receipts column? Do you want to go back to the --

01:47PM 8 A. Can we just go back to the first -- yep. Yeah. Okay.

01:47PM 9 **MR. DICKSON:** All right. Can we go back to October

01:47PM 10 2014?

01:47PM 11 **BY MR. DICKSON:**

01:47PM 12 Q. All right. So what does it say there for cash deposits?

01:47PM 13 A. Zero.

01:47PM 14 Q. It says zero?

01:47PM 15 A. Yes.

01:47PM 16 **MR. DICKSON:** Okay. Could we go back to Government

01:47PM 17 Exhibit 330? Could we go to saving receipts. 2014 receipts.

01:47PM 18 Can we go to 10/2/2014?

01:47PM 19 **BY MR. DICKSON:**

01:47PM 20 Q. All right. Now, Mr. Devereaux, this is another deposit

01:47PM 21 in Mr. Bongiovanni's accounts, right?

01:47PM 22 A. Correct.

01:47PM 23 Q. This is from October of 2014, right?

01:48PM 24 A. Yes.

01:48PM 25 Q. It's within that five-day window that you talked about,

01:48PM 1 right?

01:48PM 2 A. It is, yes.

01:48PM 3 Q. What does it say for cash in on this receipt?

01:48PM 4 A. 700.

01:48PM 5 Q. That's not reflected in your underlying data, is it?

01:48PM 6 A. It's not.

01:48PM 7 Q. So your underlying data is wrong?

01:48PM 8 A. Yes.

01:48PM 9 Q. So your charts are also wrong, right?

01:48PM 10 A. Sorry, yes.

01:48PM 11 **MR. DICKSON:** Could we go to back to OA-2, please.

01:48PM 12 Could we scroll down to March of 2015. All right.

01:48PM 13 **BY MR. DICKSON:**

01:48PM 14 Q. So now it looks like in March of 2015, you said there
01:48PM 15 were -- that there was a \$750 deposit, cash deposit, right?

01:48PM 16 A. Yes.

01:48PM 17 Q. What does it say for check deposits?

01:48PM 18 A. Zero.

01:48PM 19 **MR. DICKSON:** Okay. Could we go to Government
01:49PM 20 Exhibit 330, please. And could we back out of that, back out
01:49PM 21 of savings receipts. And could we go to deposits 1, the pdf
01:49PM 22 there. All right. And go to page 23.

01:49PM 23 **BY MR. DICKSON:**

01:49PM 24 Q. Is that a check, Mr. Devereaux?

01:49PM 25 A. It is.

01:49PM 1 Q. The capture date, what's that, July 2015 right?

01:49PM 2 A. Yes.

01:49PM 3 Q. That's within that five-day window, right?

01:49PM 4 A. It is.

01:49PM 5 Q. That check's not reflected in your underlying data, is
01:49PM 6 it?

01:49PM 7 A. It is not.

01:49PM 8 Q. So your underlying data is wrong?

01:49PM 9 A. Yes.

01:49PM 10 Q. So your charts are wrong, too, right?

01:49PM 11 A. Yes.

01:50PM 12 **MR. DICKSON:** All right. We can take this down,
01:50PM 13 Ms. Champoux. Ms. Champoux, can we please pull up Government
01:50PM 14 Exhibit OA-2 again? All right.

01:50PM 15 **BY MR. DICKSON:**

01:50PM 16 Q. So, Mr. Devereaux, on this underlying data that we've
01:50PM 17 talked about, you've agreed that there are errors in this
01:50PM 18 underlying data, right?

01:50PM 19 A. Yes.

01:50PM 20 Q. That it doesn't accurately reflect the records that
01:50PM 21 Ms. Bifano reviewed, right?

01:50PM 22 A. Yes.

01:50PM 23 Q. That it doesn't accurately review the records that you
01:50PM 24 reviewed, right?

01:50PM 25 A. Yes.

01:50PM 1 Q. It doesn't accurately reflect what you told this jury
01:50PM 2 earlier, right?

01:50PM 3 A. Correct.

01:50PM 4 Q. Now, on this underlying data, you put in one of the
01:50PM 5 columns expected rent total, right?

01:50PM 6 A. Um-hum. Yes.

01:51PM 7 Q. Yes?

01:51PM 8 A. Yes.

01:51PM 9 Q. And you got that figure from the leases that you
01:51PM 10 reviewed, correct?

01:51PM 11 A. Yes.

01:51PM 12 Q. Okay. Now, when you were looking at the cash deposits,
01:51PM 13 you told this jury that you took cash deposits that were
01:51PM 14 within five days of the start of the month, and you included
01:51PM 15 those cash deposits here, right?

01:51PM 16 A. Yes.

01:51PM 17 Q. Now with the caveat of the ones that we just went over
01:51PM 18 that were missing, that's what you tried to reflect in this
01:51PM 19 cash deposits column, right?

01:51PM 20 A. Yes.

01:51PM 21 Q. Let's just, as an example, start in August of 2012.

01:51PM 22 **MR. DICKSON:** Ms. Champoux, can we highlight that for
01:51PM 23 just a second?

01:51PM 24 **BY MR. DICKSON:**

01:51PM 25 Q. Now, in that column marked cash deposits, Mr. Devereaux,

01:51PM 1 you included a 600 -- or, \$600 worth of cash deposits, right?

01:51PM 2 A. Yes.

01:51PM 3 Q. Now, the rent that you listed right next to it, what you

01:51PM 4 used to build your charts, the rent wasn't \$600, right?

01:52PM 5 A. Correct.

01:52PM 6 Q. The rent was \$700?

01:52PM 7 A. Yes.

01:52PM 8 Q. But you included a \$600 deposit anyway?

01:52PM 9 A. Yes.

01:52PM 10 Q. And you don't know the source of that \$600, right?

01:52PM 11 A. We do not.

01:52PM 12 Q. You don't actually know if that was from rent, right?

01:52PM 13 A. Correct.

01:52PM 14 Q. You don't know if it's from a bribe, right?

01:52PM 15 A. I do not.

01:52PM 16 **MR. DICKSON:** Let's go to April of 2013. Could we

01:52PM 17 highlight that?

01:52PM 18 **BY MR. DICKSON:**

01:52PM 19 Q. And here, Mr. Devereaux, you're doing the same thing

01:52PM 20 right? You've got the expect rent, \$700, right?

01:52PM 21 A. Yes.

01:52PM 22 Q. And then right next to it you list \$1,060 in cash

01:52PM 23 deposits, correct?

01:52PM 24 A. Yes.

01:52PM 25 Q. Now, you would agree with me that \$1,060 is more than

01:52PM 1 \$700, right?

01:52PM 2 A. Yes.

01:52PM 3 Q. Would you grassy agree with me that I don't know

01:52PM 4 typically people don't pay their landlords more /THARPB

01:52PM 5 they're required to?

01:52PM 6 A. Correct.

01:52PM 7 Q. But nonetheless, Mr. Devereaux you included ^ awful ^ all

01:53PM 8 of \$1,060 in your charts?

01:53PM 9 A. We did.

01:53PM 10 Q. Even though that didn't match the \$700 of rent, right?

01:53PM 11 A. Correct.

01:53PM 12 Q. So that means that your charts included an extra \$360 in

01:53PM 13 your attribution to rent payments, right?

01:53PM 14 A. Yes.

01:53PM 15 **MR. DICKSON:** Can we please highlight May of 2013?

01:53PM 16 **BY MR. DICKSON:**

01:53PM 17 Q. And here, Mr. Devereaux, you did the same thing, right?

01:53PM 18 A. I did, yes.

01:53PM 19 Q. You included an extra \$400 above and beyond what the rent

01:53PM 20 payment was, right?

01:53PM 21 A. Yes.

01:53PM 22 Q. You included that in your analysis or your conclusion

01:53PM 23 about cash deposits that were rent payments?

01:53PM 24 A. Yes.

01:53PM 25 Q. Even though it didn't match what was the expected rent

01:53PM 1 total?

01:53PM 2 A. It did, correct.

01:53PM 3 **MR. DICKSON:** Can we highlight August of 2013?

01:53PM 4 **BY MR. DICKSON:**

01:54PM 5 Q. Same thing here, Mr. Devereaux. This time, though, you
01:54PM 6 included an extra \$520 in cash, you attributed that extra
01:54PM 7 \$520 in cash to rent, right?

01:54PM 8 A. Yes.

01:54PM 9 Q. But that's not what the expected rent was, right?

01:54PM 10 A. It was not the expected rent.

01:54PM 11 Q. Okay. And, again, you don't know the source of that
01:54PM 12 \$1,220, right?

01:54PM 13 A. Right.

01:54PM 14 Q. You don't know if it's rent?

01:54PM 15 A. Correct.

01:54PM 16 Q. You don't know if it's a bribe?

01:54PM 17 A. Correct.

01:54PM 18 **MR. DICKSON:** Can we scroll down, Ms. Champoux, can
01:54PM 19 we highlight January of 2014?

01:54PM 20 **BY MR. DICKSON:**

01:54PM 21 Q. So on January of 2014, Mr. Devereaux, you say the expect
01:54PM 22 rented is \$1,450, right?

01:54PM 23 A. Yes.

01:54PM 24 Q. But you included an extra \$1,000 bump in there, right?

01:54PM 25 A. Yes.

01:54PM 1 Q. Meaning that your charts and your underlying data
01:54PM 2 overrepresent the amount of rent that Mr. Bongiovanni
01:54PM 3 received, would you agree with me on that?

01:55PM 4 A. Yeah.

01:55PM 5 Q. And, again, you don't know where the \$2,450 comes from,
01:55PM 6 right?

01:55PM 7 A. I do not.

01:55PM 8 Q. You don't know if it's, rent?

01:55PM 9 A. Correct.

01:55PM 10 Q. You don't know if it's a bribe?

01:55PM 11 A. Correct.

01:55PM 12 Q. What about February of 2015, Mr. Devereaux? Same thing
01:55PM 13 there?

01:55PM 14 A. Same thing.

01:55PM 15 Q. Extra \$600, right?

01:55PM 16 A. Yes.

01:55PM 17 Q. That you included as expected -- or, that you included
01:55PM 18 as -- concluded was rent money, right?

01:55PM 19 A. Yes.

01:55PM 20 Q. Even though that didn't match the expected rent amount?

01:55PM 21 A. It did not.

01:55PM 22 **MR. DICKSON:** You can take that down for me,
01:55PM 23 Ms. Champoux.

01:55PM 24 **BY MR. DICKSON:**

01:56PM 25 Q. All right. Mr. Devereaux, I'm going to hand you what

1 I've marked as Government Exhibit OA-1.

2 **MR. DICKSON:** Ms. Champoux, can we pull that up for
3 the witness actually?

4 **THE COURT:** This is just for the witness now?

5 **MR. DICKSON:** Just for the witness, I'm sorry.

6 **BY MR. DICKSON:**

7 Q. This is more of your underlying data, Mr. Devereaux,
8 right?

9 A. Yes.

10 Q. And aside from the caveats of sort of the missing
11 deposits that we've talked about, you would say this is
12 fairly and accurately representative of the data that you
13 used to make your charts, right?

14 A. Yes.

15 **MR. DICKSON:** Judge I'd offer Government Exhibit
16 OA-1.

17 **MR. SINGER:** No objection.

18 **THE COURT:** Received without objection.

19 **(GOV Exhibit OA-1 was received in evidence.)**

20 **BY MR. DICKSON:**

21 Q. So I'm going to ask you to do some math. I've got a
22 calculator if you want. But for 2012 there, what's the total
23 amount that you concluded was rent money in building your
24 charts?

25 A. Cash only, or --

01:57PM 1 Q. Both. Checks and rent and cash.

01:57PM 2 A. 5,860.

01:57PM 3 Q. Okay. And that includes \$1,500 of cash, right?

01:57PM 4 A. Yes.

01:57PM 5 Q. \$1,500 that you don't know the source of?

01:57PM 6 A. Yes.

01:57PM 7 Q. Now, you said in the course of your review you reviewed

01:57PM 8 the defendant's mortgage applications; is that right?

01:57PM 9 A. Yes.

01:57PM 10 Q. Now you know, Mr. Devereaux, that in 2012, the defendant

01:57PM 11 didn't list that he got \$5,860 in rent on his mortgage

01:57PM 12 applications, did he?

01:57PM 13 A. No.

01:57PM 14 Q. But you included it as rent here?

01:58PM 15 A. Yes.

01:58PM 16 Q. What about for 2013, Mr. Devereaux? What's the amount

01:58PM 17 that you are attributing to rent in 2013?

01:58PM 18 A. 5,180.

01:58PM 19 Q. Okay. And, again, that includes some cash, right?

01:58PM 20 A. Yes.

01:58PM 21 Q. Cash that you don't know the source of?

01:58PM 22 A. Correct.

01:58PM 23 Q. You know that in 2013, the defendant took out a personal

01:58PM 24 loan, right?

01:58PM 25 A. Yes.

01:58PM 1 Q. And you reviewed those records?

01:58PM 2 A. Yes.

01:58PM 3 Q. You would agree with me that the defendant didn't list on

01:58PM 4 that personal loan that he took out 5 -- or, that he got

01:58PM 5 \$5,180 in rent?

01:58PM 6 A. He did not.

01:58PM 7 Q. He did not?

01:58PM 8 A. He did not.

01:58PM 9 Q. But you included it here anyway?

01:58PM 10 A. Yes.

01:58PM 11 Q. What about in 2016, Mr. Devereaux? What's the total that

01:58PM 12 you concluded was from rent in 2016?

01:59PM 13 A. 17,715.

01:59PM 14 Q. And that includes \$8,215 cash right?

01:59PM 15 A. Correct.

01:59PM 16 Q. Cash that you don't know the source of?

01:59PM 17 A. Correct.

01:59PM 18 Q. In the course of your review, you reviewed the

01:59PM 19 defendant's tax forms, right?

01:59PM 20 A. Yes.

01:59PM 21 Q. You know on tax forms, landlords are supposed to list how

01:59PM 22 much rent they receive, right?

01:59PM 23 A. Yes.

01:59PM 24 Q. And you would agree with me that in 2016, the defendant

01:59PM 25 didn't list that he got \$17,715 in rent on his taxes?

01:59PM 1 A. Yes.

01:59PM 2 Q. But you included it here anyway?

01:59PM 3 A. I did.

01:59PM 4 Q. What about 2017, what's math there? What did you

01:59PM 5 conclude was rent?

01:59PM 6 A. 16 -- excuse me, 16,425.

01:59PM 7 Q. And that includes \$7,400 of cash, right?

01:59PM 8 A. Yes.

01:59PM 9 Q. That you don't know the source of?

01:59PM 10 A. Yes.

01:59PM 11 Q. But you concluded that, what was it, \$16,425 was rent?

02:00PM 12 A. Yes.

02:00PM 13 Q. Do you know the defendant and his wife filled out tax

02:00PM 14 forms in 2017, right?

02:00PM 15 A. Yes, sir.

02:00PM 16 Q. Submitted those taxes to the IRS?

02:00PM 17 A. Yes.

02:00PM 18 Q. You know that on those tax forms, they didn't list

02:00PM 19 \$16,425 in rent on their taxes, did they?

02:00PM 20 A. They did not.

02:00PM 21 Q. But you put it here?

02:00PM 22 A. Yes.

02:00PM 23 Q. What about in 2018, what's the total?

02:00PM 24 A. 17,950.

02:00PM 25 Q. And that includes 8 grand worth of cash?

02:00PM 1 A. Yes.

02:00PM 2 Q. 8 grand worth of cash that you don't know the source of?

02:00PM 3 A. Yes.

02:00PM 4 Q. You know the defendant and his wife filled out taxes in

02:00PM 5 2018?

02:00PM 6 A. Yes.

02:00PM 7 Q. You looked at those records?

02:00PM 8 A. Yes.

02:00PM 9 Q. You know that they did not list \$17,950 of rental income

02:00PM 10 on their 2018 taxes?

02:00PM 11 A. Yes.

02:00PM 12 Q. But you included it here?

02:00PM 13 A. Yes.

02:01PM 14 **MR. DICKSON:** You can take that down, Ms. Champoux.

02:01PM 15 **BY MR. DICKSON:**

02:01PM 16 Q. Mr. Devereaux, I want to just be clear about this. You

02:01PM 17 don't know whether the defendant ever got cash from somebody

02:01PM 18 named Ron Serio, do you?

02:01PM 19 A. I do not.

02:01PM 20 Q. You don't know whether the defendant ever got cash from

02:01PM 21 somebody named Michael Masecchia, do you?

02:01PM 22 A. I do not.

02:01PM 23 Q. You don't know whether the defendant ever got cash from

02:01PM 24 someone named Peter Gerace, do you?

02:01PM 25 A. I do not.

Q. You don't know whether the defendant ever got cash from somebody named Katrina Nigro, do you?

A. I do not.

MR. DICKSON: Just a moment, please, sir.

I have no more questions, Judge.

THE COURT: Redirect, Mr. Singer?

MR. SINGER: Yes, Your Honor.

REDIRECT EXAMINATION BY MR. SINGER:

Q. So, Mr. Devereaux, it looks like we have some math errors in some of these things you prepared; is that a fair statement?

A. Yes.

Q. All right. Well, so let's go through some of those math errors, all right?

MR. SINGER: Ms. Champoux, can you bring up Government Exhibit -- sorry, Exhibit OA-2, please?

BY MR. SINGER:

Q. Sir, a couple things that I want to go with you on this chart that the government identified during your cross-examination. So, I want to direct your attention first to this March 2012 figure.

MR. SINGER: We can't write on the screen?

THE CLERK: Try it again, Mr. Singer?

MR. SINGER: Sure.

02:02PM 1 **THE CLERK:** I think it needs to be calibrated, I have
02:02PM 2 to shut the system down to do that.

02:02PM 3 **MR. TRIPI:** Do you want us to highlight it?

02:02PM 4 **MR. SINGER:** Yeah. Appreciate it, Ms. Champoux.

02:02PM 5 **BY MR. SINGER:**

02:02PM 6 Q. With regard to one particular figure, Mr. Dickson asked
02:03PM 7 you about whether or not the payment for \$700 was something
02:03PM 8 that was reflected in your charts; is that right?

02:03PM 9 A. Yes.

02:03PM 10 Q. So based on the data that you take a look at here, is
02:03PM 11 that \$700 figure not counted, or counted?

02:03PM 12 A. Not counted.

02:03PM 13 Q. All right. So in other words, that's not part of the
02:03PM 14 data that was reflected on the bars?

02:03PM 15 A. Yes.

02:03PM 16 Q. And that's something, based on the accounting principles
02:03PM 17 that we talked about earlier, should have been counted,
02:03PM 18 right?

02:03PM 19 A. Yes.

02:03PM 20 Q. So that's \$700 that was not counted.

02:03PM 21 I want to direct your attention to January of 2013.

02:03PM 22 **MR. SINGER:** Ms. Champoux, if you can highlight that?
02:03PM 23 Thank you.

02:03PM 24 **BY MR. SINGER:**

02:03PM 25 Q. So was this another example of \$700 that should have been

02:03PM 1 counted but was not counted?

02:03PM 2 A. Yeah. Yes.

02:03PM 3 Q. So we're up to \$1,400, you'd agree me, that at this point
02:03PM 4 has not been counted?

02:03PM 5 A. Yes.

02:03PM 6 Q. Another example that the government showed you --

02:03PM 7 **MR. SINGER:** It's on the next page, Ms. Champoux,
02:04PM 8 November 2013.

02:04PM 9 **BY MR. SINGER:**

02:04PM 10 Q. So this was a \$700 payment. Was this counted or not
02:04PM 11 counted, sir?

02:04PM 12 A. Not counted.

02:04PM 13 Q. So that would be another \$700 that was not counted. So
02:04PM 14 we're up to \$2,100 that wasn't counted?

02:04PM 15 A. Correct.

02:04PM 16 Q. October of '14, which is a little bit lower in the
02:04PM 17 middle.

02:04PM 18 **MR. SINGER:** Thank you, Ms. Champoux.

02:04PM 19 **BY MR. SINGER:**

02:04PM 20 Q. So this is a situation where there was both a cash and a
02:04PM 21 check deposited; is that right, sir?

02:04PM 22 A. Yes.

02:04PM 23 Q. And it would have been for \$1,500?

02:04PM 24 A. Yeah.

02:04PM 25 Q. But it looks like on the data, that \$1,500 wasn't

02:04PM 1 counted; is that right?

02:04PM 2 A. Yep.

02:04PM 3 Q. And you'd agree with me that at this point, we're up to

02:04PM 4 \$3,600 that's not counted?

02:04PM 5 A. Yes.

02:04PM 6 Q. March of '15, which is just under that, so this is a

02:04PM 7 situation where it looks like there was a check and a cash

02:05PM 8 deposit for 750 -- or, I'm sorry, for expected rent of 1,500?

02:05PM 9 A. Yes.

02:05PM 10 Q. And it looks like on the data, what -- what exactly was

02:05PM 11 counted there?

02:05PM 12 Sure. So on -- for March 15, based on the chart data

02:05PM 13 that you see before you, what was counted as far as a

02:05PM 14 deposit?

02:05PM 15 A. Can you scroll up?

02:05PM 16 **MR. SINGER:** Sure. If we can go back to the first

02:05PM 17 page just so we can see the --

02:05PM 18 **BY MR. SINGER:**

02:05PM 19 Q. So what appears to be counted, sir?

02:05PM 20 A. 750.

02:05PM 21 Q. Is there anything missing in that entry?

02:05PM 22 A. Sorry, what?

02:05PM 23 Q. Is there anything missing that should have been counted

02:05PM 24 there?

02:05PM 25 A. Can you scroll back up and --

02:05PM 1 Q. Certainly.

02:05PM 2 A. The cash deposit -- yeah, I'm not -- I'm not following

02:05PM 3 the question.

02:05PM 4 Q. Sure. So go back to March 15. So would you agree with

02:06PM 5 me that it looks like there's an expected cash -- there's an

02:06PM 6 expected deposit for 750 for the upper unit?

02:06PM 7 A. 750 for what?

02:06PM 8 Q. For the upper unit at 221 Lovering?

02:06PM 9 A. Yes.

02:06PM 10 Q. And over to the right of that 750 figure, there's another

02:06PM 11 750 figure, because that's another expected rent figure for

02:06PM 12 the lower unit?

02:06PM 13 A. Yes.

02:06PM 14 Q. And then as far as the \$1,500 figure there in the middle,

02:06PM 15 what does that reflect?

02:06PM 16 A. The expected rent.

02:06PM 17 Q. The total expected rent?

02:06PM 18 A. Yeah.

02:06PM 19 Q. And then as far as the next figure, the 750 on there,

02:06PM 20 what does that reflect, sir?

02:06PM 21 A. The --

02:06PM 22 Q. If you need to, we can scroll up to the top of the chart

02:06PM 23 again.

02:06PM 24 A. The total deposits.

02:06PM 25 Q. So that represents a cash deposit that was made?

02:06PM 1 A. Yes.

02:06PM 2 **MR. SINGER:** If we can scroll back down to that
02:06PM 3 second page.

02:06PM 4 **BY MR. SINGER:**

02:06PM 5 Q. As far as a check deposit, does it appear like a check
02:06PM 6 may not have been counted in that situation?

02:07PM 7 A. Say that again, please?

02:07PM 8 Q. Certainly. So I noted that the data figure for the
02:07PM 9 deposits for checks for that month in March of 2015, there's
02:07PM 10 a dash next to it?

02:07PM 11 A. Yes.

02:07PM 12 Q. Is that missing data?

02:07PM 13 A. Yes.

02:07PM 14 Q. Should there have been a check reflected in there?

02:07PM 15 A. Yes.

02:07PM 16 Q. So it's missing 750?

02:07PM 17 A. Yes.

02:07PM 18 Q. So if we can add that to the \$3,600 that we've just been
02:07PM 19 talking about, that brings us up to 4,350 that hasn't been
02:07PM 20 counted at this point?

02:07PM 21 A. Yes.

02:07PM 22 Q. So there are a couple of different things the government
02:07PM 23 raised that they believe you overcounted; is that a fair
02:07PM 24 statement?

02:07PM 25 A. Can you say that again?

02:07PM 1 Q. Sure. There were some entries in the chart data that the
02:07PM 2 government reflected were overcounted; fair statement?

02:07PM 3 A. Yes.

02:07PM 4 **MR. SINGER:** So if we can go back to the second page
02:07PM 5 which I think -- are we up, yes, thank you, Ms. Champoux.

02:07PM 6 **BY MR. SINGER:**

02:08PM 7 Q. So one of those entries related to April of 2013; is that
02:08PM 8 right?

02:08PM 9 **MR. SINGER:** Actually, I'm sorry, Ms. Champoux. If
02:08PM 10 we can scroll back up to the first page and highlight April of
02:08PM 11 '13.

02:08PM 12 **THE WITNESS:** Yes.

02:08PM 13 **BY MR. SINGER:**

02:08PM 14 Q. So, notice that there's an entry for an expected rent in
02:08PM 15 the upper; is that right?

02:08PM 16 A. Yes.

02:08PM 17 Q. That was 700?

02:08PM 18 A. Yes.

02:08PM 19 Q. And then as far as expected rent in the lower, that was
02:08PM 20 left blank, and that was intentional, right?

02:08PM 21 A. Right.

02:08PM 22 Q. Because at that point in time, Joseph Bongiovanni was
02:08PM 23 living in the lower with Lindsay?

02:08PM 24 A. Yes.

02:08PM 25 Q. So I noted that the next column over, there's a cash

02:08PM 1 deposit for 1,060; is that right?

02:08PM 2 A. Yes.

02:08PM 3 Q. And so that's an example of something that was

02:08PM 4 overcounted?

02:08PM 5 A. Well, there's no rent in March of 2013, so there could

02:08PM 6 have been a catchup payment or, you know, they deposited,

02:08PM 7 like, a first and last check. You know, like, say a deposit

02:09PM 8 on the 1st of the month and 31st of the month.

02:09PM 9 Q. So --

02:09PM 10 A. There were instances of that. I honestly don't recall if

02:09PM 11 that is one of them, but that did certainly happen.

02:09PM 12 Q. So, let's assume that that was calculated incorrectly. A

02:09PM 13 correct figure on that, you would agree with me, would be

02:09PM 14 700, right?

02:09PM 15 A. Yes.

02:09PM 16 Q. So, if we're subtracting 700 from that 1,060 entry, you

02:09PM 17 would agree with me that would be a \$960 overage?

02:09PM 18 A. Should be \$360 over.

02:09PM 19 Q. 360, I'm sorry. That's the lawyer math coming out right

02:09PM 20 there. So 360 over on that one entry; is that right?

02:09PM 21 A. Yes.

02:09PM 22 Q. The government also asked you about the August 2013 entry

02:09PM 23 that's just below it; is that right?

02:09PM 24 A. Yes.

02:09PM 25 Q. So in August of 2013, there was the expectation of a rent

1 payment for the upper unit, right?

2 A. Yes.

3 Q. And that's reflected on the far left?

4 A. Yes.

5 Q. And they expected a rent total of 700, correct?

6 A. Yes.

7 Q. So as far as the cash deposits that were recorded at that
8 point, that was \$1,220 on the chart?

9 A. Yes.

10 Q. And I think you testified on cross-examination that
11 that's incorrect, right?

12 A. Yeah.

13 Q. Is that an instance of overcounting?

14 A. Yes.

15 Q. So if we subtracted \$700 from that 1,220 figure, would
16 you agree with me that that's an overage of \$520?

17 A. Yes.

18 Q. So if we add the 520 to the 360 we just talked about,
19 we're talking about \$880 in overcounting in that situation?

20 A. Yes.

21 **MR. SINGER:** Okay. The government also -- if we can
22 scroll to the next page, Ms. Champoux.

23 **BY MR. SINGER:**

24 Q. They talked about January of 2014 as being an example of
25 an overage; is that right?

02:11PM 1 A. Yes.

02:11PM 2 Q. So in this situation, you're aware this is after the --
02:11PM 3 Fred and Maria Bongiovanni move into the lower apartment,
02:11PM 4 right?

02:11PM 5 A. Correct.

02:11PM 6 Q. So there would be an expectation of receiving rent from
02:11PM 7 both the upper and lower apartments?

02:11PM 8 A. Yes.

02:11PM 9 Q. So as far as the calculation on that, the expectation was
02:11PM 10 that 1,450 --

02:11PM 11 A. Yes.

02:11PM 12 Q. -- would have been deposited at that point?

02:11PM 13 But it was counted as 2,450 in the chart?

02:11PM 14 A. Yeah.

02:11PM 15 Q. So, what is the overage on that, sir?

02:11PM 16 A. 1,000.

02:11PM 17 Q. So if we add that to the 880 we just talked about, we're
02:11PM 18 talking about 1,880 in overages at this point?

02:11PM 19 A. Yes.

02:11PM 20 Q. So, if we subtract that 1,880 in overages that we just
02:11PM 21 spoke about from the 4,350 that we were talking about that
02:11PM 22 should have been counted but wasn't -- I'm going to get a
02:12PM 23 calculator here because I've reached the max capacity.

02:12PM 24 So let me see if I can do this. 4,350 minus 1,880.

02:12PM 25 Would you agree with me that that would be still a figure

1 of \$2,470 that should have been count, but wasn't?

2 A. Yes.

3 Q. And just so that we're all clear, that would actually

4 inure to Mr. Bongiovanni's benefit, not his detriment, right?

5 **MR. DICKSON:** Objection, improper opinion.

6 **THE COURT:** Sustained.

7 **BY MR. SINGER:**

8 Q. So you were asked a couple of other questions on

9 direct -- I'm sorry, on cross-examination. So Jennifer

10 Jackson, she was somebody that you learned was a tenant,

11 correct?

12 A. Correct.

13 Q. And she was someone you also personally knew?

14 A. She was my neighbor at one point.

15 Q. Okay. I know the government asked you, you know, if you

16 were helping Mr. Bongiovanni with something else other than

17 accounting by offering your assistance in tracking her down;

18 is that right?

19 A. Yeah.

20 Q. Would it have been helpful to your analysis if you spoke

21 to her and learned about what her rent payment techniques

22 were?

23 A. Yes.

24 Q. The government talked to you about some tax returns; do

25 you remember those?

02:13PM 1 A. Yeah.

02:13PM 2 Q. So, there were a couple different questions they asked
02:13PM 3 regarding charitable contributions; is that right?

02:13PM 4 A. Correct.

02:13PM 5 Q. And you recall on some of those contributions, the dates
02:14PM 6 that were listed for when the purchases were -- were -- were
02:14PM 7 made was various; is that right?

02:14PM 8 A. Yes.

02:14PM 9 Q. So, you've helped people do their taxes before, right?

02:14PM 10 A. Yes.

02:14PM 11 Q. Why would someone put down various in a column like that
02:14PM 12 instead of listing a particular date?

02:14PM 13 **MR. DICKSON:** Objection, improper opinion.

02:14PM 14 **MR. SINGER:** I wasn't the one who raised it, Judge.

02:14PM 15 **MR. DICKSON:** That doesn't make it not an improper
02:14PM 16 opinion.

02:14PM 17 **THE COURT:** I'll sustain the objection to the form of
02:14PM 18 the question.

02:14PM 19 **BY MR. SINGER:**

02:14PM 20 Q. So, as far as the various dates, can you determine by
02:14PM 21 looking in the form when the purchases were made on any of
02:14PM 22 those charitable contribution claims?

02:14PM 23 A. No.

02:14PM 24 Q. So it could be something that happened 20 years ago?

02:14PM 25 A. Correct.

02:14PM 1 Q. Could it happen ten years ago?

02:14PM 2 A. Correct.

02:14PM 3 Q. It could happen five years ago?

02:14PM 4 A. Yes.

02:14PM 5 Q. But you really can't tell, similar to Ms. Bifano, about
02:15PM 6 when those purchases were made, correct?

02:15PM 7 A. That's correct.

02:15PM 8 Q. And I know that Mr. Dickson asked you about purchases
02:15PM 9 with cash. You couldn't tell whether those were purchased,
02:15PM 10 like, with cash just like Ms. Bifano couldn't, right?

02:15PM 11 A. That's true.

02:15PM 12 Q. And the government also asked you some questions about
02:15PM 13 the purchases. The data that you possessed was the same as
02:15PM 14 Ms. Bifano; is that right?

02:15PM 15 A. Yes.

02:15PM 16 Q. But there were some limitations in the data that you had
02:15PM 17 as far as deciphering transactions, specific --

02:15PM 18 **MR. DICKSON:** Judge, I'm going to object to leading
02:15PM 19 at this point.

02:15PM 20 **THE COURT:** Yeah, sustained.

02:15PM 21 **BY MR. SINGER:**

02:15PM 22 Q. Were there any limitations inside the data that you
02:15PM 23 possessed, like Ms. Bifano possessed, about specific
02:15PM 24 transaction data?

02:15PM 25 A. I don't know the answer to that.

02:15PM 1 Q. Yeah, so, when you were talking -- when we're talking
02:16PM 2 about purchases, the forms and documents and records that you
02:16PM 3 reviewed, what was it that those listed?
02:16PM 4 A. The credit card?
02:16PM 5 Q. Credit cards. What was it they listed?
02:16PM 6 A. It would list the retailer that, you know, they went and
02:16PM 7 made a purchase at.
02:16PM 8 Q. Was any of the data that you possessed something that
02:16PM 9 listed specific purchases, like you get in an itemized
02:16PM 10 receipt?
02:16PM 11 A. Right. No.
02:16PM 12 Q. And Ms. Bifano didn't have access to that type of data
02:16PM 13 based on your review of the documents?
02:16PM 14 A. Not that I'm aware of.
02:16PM 15 Q. So did that have any type of limitation on how you could
02:16PM 16 discern whether things were purchased and what was purchased?
02:16PM 17 A. Yes.
02:16PM 18 Q. But kind of like how we talked about on direct, were
02:16PM 19 there payments that you saw going to particular retailers
02:16PM 20 based on the review of the documents you took a look at?
02:16PM 21 A. Yes.
02:16PM 22 Q. And they were still, the Bongiovannis, based on your
02:17PM 23 review of everything, they're still accruing debt as time
02:17PM 24 went on?
02:17PM 25 A. Yes.

02:17PM 1 Q. Mr. Dickson started talking to you about the cash
02:17PM 2 deposits that were happening towards the later end of the
02:17PM 3 month or beginning of a month. And he asked you, you know,
02:17PM 4 how is it possible to attribute those to particular things.

02:17PM 5 And I guess when you were looking at the cash deposits
02:17PM 6 going into Mr. Bongiovanni's account, were you comparing them
02:17PM 7 to other transactions?

02:17PM 8 A. Yeah. We were. So, for example, if we saw a rent check
02:17PM 9 going in that month, then we would not expect to see two,
02:17PM 10 like, so if there were people living in the upper and the
02:18PM 11 lower, one point if we saw, like, the upper paying rent with
02:18PM 12 a check, then we would not expect to see, you know, two
02:18PM 13 months of cash in that month.

02:18PM 14 Q. Okay. And we talked about it a little bit, we went
02:18PM 15 through it and I'm not going to go through it again, but were
02:18PM 16 you looking at Frederick Bongiovanni's account data to see --

02:18PM 17 A. Yes.

02:18PM 18 Q. -- whether cash withdrawals were being made?

02:18PM 19 A. Yeah, we were looking at his data.

02:18PM 20 Q. And how did that help you as far as your determination of
02:18PM 21 whether or not there were cash payments being made for rent?

02:18PM 22 A. We saw him, Mr. -- Fred Bongiovanni withdrawing cash near
02:18PM 23 the end of the month or the very beginning of the following
02:18PM 24 month that would be enough to cover his rent payments.

02:18PM 25 Q. And one of the examples that Mr. Dickson brought up, he

1 brought up this \$100 birthday gift example; do you remember
2 that?

3 A. Yes.

4 Q. So, what we discussed on direct, would that be an example
5 of something that you would include in your data, \$100
6 deposit of cash?

7 A. I think we did include some \$100 cash deposits, but I
8 know that we did exclude a couple \$100 deposits. The ones
9 that fell outside of the five-day, you know, five-day window
10 that we discussed.

11 **MR. SINGER:** Just a moment, Judge.

12 Ms. Champoux, can you take that exhibit down, and
13 bring back Exhibit zero point -- sorry, 0.2, please.

14 **BY MR. SINGER:**

15 Q. All right. So we talked a little bit about this chart in
16 your underlying data; is that right?

17 A. Yes.

18 Q. So one of the things we -- we went through the math. And
19 when we started to go through the math, we came to a little
20 bit of a different figure; is that correct?

21 A. Correct.

22 Q. And what we're talking about is that when you subtract
23 all of the overcounting from the undercounting, we get to
24 that \$2,470 figure.

25 A. Yes.

02:20PM 1 Q. So, I want to direct your attention down to that lower
02:20PM 2 right portion of the chart.

02:20PM 3 A. Correct.

02:20PM 4 Q. See that number there in red, in parentheses, the \$16,633
02:21PM 5 figure there, sir?

02:21PM 6 A. Yes.

02:21PM 7 Q. So, how would that \$2,470 figure affect that?

02:21PM 8 A. The balance on the far right in the red, \$16,633 would
02:21PM 9 decrease by 2,470.

02:21PM 10 Q. So it would be less --

02:21PM 11 A. Less of a shortage, of a shortfall.

02:21PM 12 **MR. SINGER:** Thank you. I have no further questions,
02:21PM 13 Judge.

02:21PM 14 **THE COURT:** Recross, Mr. Dickson?

02:21PM 15 **MR. DICKSON:** No, Judge. Thank you.

02:21PM 16 **THE COURT:** You may step down, sir. Thank you.

02:21PM 17 (Witness excused at 2:21 p.m.)

02:21PM 18 **THE COURT:** Anything more from the defense?

02:21PM 19 **MR. SINGER:** Just one moment, Judge.

02:22PM 20 Thank you, Your Honor. At this time, the defense
02:22PM 21 rests.

02:22PM 22 **DEFENDANT RESTS**

02:22PM 23 **THE COURT:** Okay. Any rebuttal from the government?

02:22PM 24 **MR. COOPER:** Can we just have a minute to --

02:22PM 25 **THE COURT:** Absolutely.

02:22PM 1 **MR. COOPER:** Thank you, Judge. We should have known
02:22PM 2 that question is coming.

02:22PM 3 No, thank you, Judge.

02:22PM 4 **THE COURT:** Okay. So, folks, as expected our proof
02:22PM 5 is ended, which means that we are on track for what I said
02:23PM 6 earlier this week. That means be back on Tuesday for the
02:23PM 7 lawyers' summations. And then Wednesday, my charge to you and
02:23PM 8 deliberations will begin. Okay?

02:23PM 9 So we're going to discharge you now for the weekend.
02:23PM 10 And, again, it's the weekend, it's a holiday weekend for some
02:23PM 11 of us, so please, please, please, do not discuss any aspect of
02:23PM 12 this case with anyone -- any of your relatives, anybody who
02:23PM 13 you have Easter dinner with, or if you're not celebrating
02:23PM 14 Easter, a nice weekend dinner -- don't talk to anybody about
02:23PM 15 this case.

02:23PM 16 Don't use tools of technology in your spare time to
02:23PM 17 do any research about the case, or to communicate about the
02:23PM 18 case.

02:23PM 19 Don't read, or listen to, or watch any news coverage
02:23PM 20 of the case, if there is any, while the trial is in progress.
02:23PM 21 And don't make up your mind about anything until you're
02:23PM 22 finally instructed, that would be next week, the end is in
02:23PM 23 sight, so that will be next week.

02:24PM 24 We're very close to the end now, so please, please,
02:24PM 25 please, don't violate any of these instructions I've been

1 giving you. We've been doing well so far, and we hate to have
2 the trial jeopardized by somebody, and it only takes one of
3 you jeopardize it.

4 So, we'd hate to have the trial jeopardized by
5 somebody doing something that he or she shouldn't.

6 Okay? Have a wonderful weekend. Those who are
7 celebrating Easter, Happy Easter. Those who are not, Happy
8 Weekend.

9 And we'll see you back on Tuesday morning. Thank you
10 all very much.

11 (Jury excused at 2:24 p.m.)

12 **THE COURT:** Okay. Anything we need to put on the
13 record before we break?

14 **MR. TRIPI:** Nothing from the government.

15 **MR. SINGER:** What time Monday do you expect us?

16 **THE COURT:** That was going to be my question to you
17 folks. What time do you want to do the charge conference?

18 It turns out that the funeral is not on Monday, it's
19 on Tuesday, so I'm just not going to be able to go. Well, so
20 be it. So, what time -- what time do you folks think?

21 **MR. TRIPI:** How's 10:00 sound?

22 **MR. SINGER:** It sounds good to me, Judge.

23 **THE COURT:** Yeah. Sounds good to me, too. So let's
24 do it. I don't -- I mean, you folks will know how long it's
25 going to take. I usually don't take more than an hour or two.

02:25PM 1 Have you submitted any requested charges?

02:25PM 2 **MR. SINGER:** We did not, Judge. We took a look over
02:25PM 3 the weekend, and we didn't -- I know we were talking about a
02:25PM 4 missing witness charge, we decided not to submit that.

02:26PM 5 **THE COURT:** The government submitted a couple
02:26PM 6 additional charges which I thought were okay. Did we send
02:26PM 7 those out?

02:26PM 8 **MS. IZZO:** We did.

02:26PM 9 **THE COURT:** Okay. So you folks have the new charges
02:26PM 10 the government has requested.

02:26PM 11 **MR. SINGER:** I think Mr. MacKay and I, we have
02:26PM 12 Mr. Gilsenan taking a look at the draft charge that we just
02:26PM 13 got from Ms. Izzo the other day, so we'll do our best.

02:26PM 14 **THE COURT:** Yeah. And we'll go over it, as I said,
02:26PM 15 not quite page by page, but at least chunk of pages by chunk
02:26PM 16 of pages. And as I say, we'll then hear whether folks have --
02:26PM 17 I'm sure there will be exceptions, and when you have them,
02:26PM 18 we'll talk them through.

02:26PM 19 **MR. TRIPI:** May I make I quick request of Ms. Izzo?
02:26PM 20 I'm sorry. I think I accidentally deleted your new email with
02:26PM 21 the charges, so can you resend that one? Thank you.

02:26PM 22 **MR. SINGER:** Judge, this is my first trial with you,
02:26PM 23 and I think it's Mr. MacKay's first trial with you, as well.
02:26PM 24 But in the past, if we had suggestions, I found it easy to
02:26PM 25 just do track changes on the Word document that your chambers

02:26PM 1 sent out. Is that something that you like to do?

02:26PM 2 **THE COURT:** I'd prefer to do it orally at the
02:27PM 3 conference rather than getting something in writing.

02:27PM 4 **MR. SINGER:** Okay.

02:27PM 5 **THE COURT:** So if you have something -- I mean, if
02:27PM 6 you want to submit something in writing, go ahead. It might
02:27PM 7 be easier for my law clerk. But for me, it just has worked
02:27PM 8 very well, I say, you know, my first set of -- my question is
02:27PM 9 on page 17, does anybody have one before that? And then, you
02:27PM 10 know, Mr. Cooper says yeah, I've got something on page 15, the
02:27PM 11 first paragraph I think should be cut. I like to do it that
02:27PM 12 way.

02:27PM 13 **MR. SINGER:** Okay.

02:27PM 14 **THE COURT:** But if you want to submit something in
02:27PM 15 writing, feel free. Okay? Okay. Anything else?

02:27PM 16 **MS. IZZO:** Judge, it just occurred to me that we
02:27PM 17 haven't gotten any proposed charges on the forfeiture, if that
02:27PM 18 is still --

02:27PM 19 **MR. SINGER:** It's OB, right? Based on the email I
02:27PM 20 got from asset forfeiture, the way it's -- I think the way
02:27PM 21 it's charged is there's no right that Mr. Bongiovanni has to a
02:27PM 22 proceeding before the jury? Correct me if I'm wrong.

02:28PM 23 **MR. TRIPI:** Yeah, that's what -- I can go circle back
02:28PM 24 to our forfeiture attorney, but I think that that's -- that's
02:28PM 25 correct.

02:28PM 1 **THE COURT:** So there is not going to be a forfeiture
02:28PM 2 charge?

02:28PM 3 **MR. SINGER:** So I think the way -- the way it was
02:28PM 4 brought up, I think just it goes solely to you, Judge.

02:28PM 5 **THE COURT:** Okay.

02:28PM 6 **MR. SINGER:** I haven't looked at it in two months, so
02:28PM 7 I apologize, the way I understood it at the time was that I
02:28PM 8 was in agreement that the way --

02:28PM 9 **THE COURT:** Okay. So take a look over the weekend,
02:28PM 10 if you have any objection, raise it next week, obviously.

02:28PM 11 **MR. TRIPI:** Judge, I can read what we were
02:28PM 12 referencing into the record. It's an email to you. Is that
02:28PM 13 okay? It's from our office, explaining our position on it. I
02:28PM 14 think that's what Mr. Singer and I were both trying to recall.

02:28PM 15 **MR. SINGER:** Correct.

02:28PM 16 **MR. TRIPI:** I'll skip the introductory part.

02:28PM 17 As set forth in the second superseding indictment,
02:28PM 18 the government notified the defendant that upon conviction of
02:28PM 19 the violations, the United States will seek to impose a
02:28PM 20 forfeiture money judgment of \$250,000 which represents the
02:28PM 21 proceeds obtained as a result of such offenses.

02:29PM 22 Additionally, the superseding indictment also
02:29PM 23 included a forfeiture allegation for firearms and ammunition
02:29PM 24 seized from the defendant. Four items specified in that
02:29PM 25 allegation were administratively forfeited in 2021 and 2020

02:29PM 1 respectively. Therefore, the government is not seeking to
02:29PM 2 forfeiture these items through this criminal case.

02:29PM 3 Since the government is only seeking a forfeiture
02:29PM 4 money judgment, a jury determination is neither necessary nor
02:29PM 5 warranted by law. Rule 32.2B1A provides that, quote, if the
02:29PM 6 government seeks a personal money judgment against the
02:29PM 7 defendant, the Court must determine the amount of the money
02:29PM 8 that the defendant will be ordered to pay.

02:29PM 9 Attached is a trial document filed in this case which
02:29PM 10 sets forth legal authority supporting this position.

02:29PM 11 The government respectfully requests that the Court
02:29PM 12 make any forfeiture determination in the event the defendant
02:29PM 13 is convicted.

02:29PM 14 And that filing, Judge, that was attached is at
02:29PM 15 ECF 555.

02:29PM 16 **THE COURT:** Great.

02:29PM 17 **MR. SINGER:** My understanding, and I spoke to
02:30PM 18 Mr. Harrington about this a long, long time ago, so I will not
02:30PM 19 trust my memory 100 percent. But I don't believe an
02:30PM 20 administrative claim was made back when he was representing
02:30PM 21 Mr. Bongiovanni. And I agree that at that point the
02:30PM 22 forfeiture happened administratively. So, the physical items
02:30PM 23 are totally OB at this point.

02:30PM 24 And then as far as the money judgment, I think --
02:30PM 25 Mr. MacKay and I discussed it, and we're in agreement that

there's probably not a jury question there. But we'll take another look, Judge. If there's anything that we object to, we'll --

THE COURT: Okay. Great. Terrific. Good.

Anything else from the government?

MR. TRIPI: No, Your Honor.

THE COURT: Anything else from the defense?

MR. SINGER: No, Your Honor.

THE COURT: Okay. So we'll see you folk at 10:00 on Monday morning, right? That works for us, for our schedule?

MS. IZZO: Yes, Judge.

THE COURT: Okay. See you at 10:00 Monday. Thanks, everybody, have a good weekend.

MR. TRIPI: Have a good weekend everybody, have a good Easter.

(Proceedings concluded at 2:30 p.m.)

* * * * *

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on March 28, 2024.

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.

TRANSCRIPT INDEX**FULL DAY OF JURY TRIAL****MARCH 28, 2024****W I T N E S S****P A G E****T H O M A S D E V E R E A U X**

7

DIRECT EXAMINATION BY MR. SINGER:

8

CROSS-EXAMINATION BY MR. DICKSON:

83

REDIRECT EXAMINATION BY MR. SINGER:

133

E X H I B I T S**P A G E**

DFT Exhibit O.1

69

DFT Exhibit O.2

76

GOV Exhibit OA-2

115

GOV Exhibit OA-1

128

DEFENDANT RESTS

149